

110

AN HISTORICAL ACCOUNT
OF THE
PRIVILEGES OF THE COLLEGE OF JUSTICE.

SUDANDUM EST HIS, QUI MAGISTRATUM GERUNT PRO COMMUNIBUS
COMMODIS, ADEUNDE INIMICITIÆ, SUBEUNDE SÆPE PRO REPUBLICA
TEMPESTATES—NONNUNQUAM ETIAM CUM POTENTIBUS DIMICANDUM.

*By Walter Rop Writer to the Signet
whose handwriting is underneath*

David Stewart Esqr
manu auctoris

AN HISTORICAL ACCOUNT

OF THE COLONY OF VIRGINIA

BY JAMES OGLETHORPE, ESQ. OF THE COLONY OF GEORGIA.
IN TWO VOLUMES. THE FIRST VOLUME CONTAINS
A HISTORY OF THE COLONY OF VIRGINIA, FROM
THE FIRST SETTLEMENT, TO THE PRESENT TIME.



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E R A T A

Page	Line	
7.	5.	for benches,—read benches.
13.	12.	for privilege: of the Court of Session,—and privilege of the Members of the Court of Session.
14.	25.	for acts of Court itself,—and acts of the Court itself.
26.	6.	for was first to be formally amended to,—do to be.
28.	20.	for ought to have submitted,—and ought to have been submitted.
95.	12.	for act of opposition,—and act of opposition.
104.	14.	for justice on him,—and justice on them.
108.	26.	for bon and tal,—and bon and tal.
109.	16.	for our own right,—and our own right.
111.	23.	for appointed next to an investigation,—and next to an investigation.
		charged.

E R R A T A.

Page. Line.

7. 5. *for* benefice,—*read* benefices.
13. 15. *for* privilege of the Court of Session,—*read* privilege of the Members of the Court of Session.
14. 25. *for* acts of Court itself,—*read* acts of the Court itself.
26. 6. *for* was first *to be* seriously attended to,—*dele* to be.
86. 20. *for* ought to have subsisted,—*read* ought to have been observed.
95. 15. *for* act of oppression,—*read* acts of oppression.
104. 14. *for* justice on him,—*read* justice on them.
108. 26. *for* bon aura fait,—*read* l'on aura fait.
109. 16. *for* our own countryman,—*read* our countryman.
111. 23. *for* approached near to an inversion,—*read* had almost changed.

A N A C C O U N T
O F T H E
P R I V I L E G E S O F T H E C O L L E G E O F J U S T I C E.

PROPOSALS were lately submitted to the consideration of the inhabitants of the City of Edinburgh, in a printed paper, under the signature of *A Citizen*.

The objects of these Proposals were,

- To open a communication from the High Street, to the buildings on the South side of Edinburgh, by a Bridge.
- To provide a regular fund for the proper support of the Poor.
- To abolish the impost, and to unite the City with the new improvements around it, by removal of the useless and cumbersome Town-Wall.
- To render the taxes on the citizens of all descriptions more equal and impartial:
- And, lastly,
- To establish a revenue under commission, for lighting the City completely.

The

The prospect of such great and necessary improvements, gave pleasure to every person who wished prosperity to the ancient Metropolis of Scotland.—The writer of the Proposals judged it sufficient to state them with simple perspicuity, under the very reasonable expectation, “ that no narrow prejudices, or
 “ party spirit, might interpose, to frustrate intentions, formed
 “ for the benefit of the Poor, the accommodation of the Rich, the
 “ improvement and embellishment of the City, and the general
 “ good of all concerned *.”

The first step towards the execution of this comprehensive plan, was, to obtain the consent of the College of Justice to the removal of certain exemptions, which its members had for some time enjoyed, under the title of *Special Privileges*.

The matter came before the Faculty of Advocates; when, to the surprize and regret of the City, that most respectable Body, by a majority of their number, resolved to preserve and defend the immunities presently enjoyed, as privileges inherent in their Body, and (according to common report) *to listen to no future terms or proposals upon the subject*.

It behoved then the great plan of improvement to be quashed at once.—An enquiry, however, was ordered to be made into the nature, extent and title of the College of Justice, to the exemptions in question; and it is believed, that, if these matters had been at first fully laid open, the resolution of the Honourable Faculty upon the subject, would have been different, or, at least, that all future treaty would not have been excluded.

No hopes of relief are now left to the City, but from the laws of the kingdom; and it is with that view, the matter of the following sheets was collected and arranged.

Before advising a measure of such importance, and, according to the ideas presently entertained, so unpromising of success, as a trial
 with

* Proposals, in fine.

with the Body of the Law, the authors of the Plan judged it their duty, to lay before their fellow-citizens and the Public, a full state of the facts they have been able to discover, relative to the privileges of the College of Justice, without omitting or concealing a single circumstance.

The authorities are referred to ; and, if any error be committed, it is contrary to the intention of all concerned.

The notion generally entertained, respecting the immunities enjoyed by the members of the College of Justice from the common burdens of the City of Edinburgh, is, that they stand established, by original and specific grants from the Kings and Parliament of Scotland, and have been rendered venerable, by the uninterrupted possession of ages.

The ancient and undoubted privileges of that August Body, come within the terms of this description.—The *exemptions to be contested*, on the contrary, have the weight of the Crown and the Legislature, and even of possession, against them : They were combated by the City with success, before every tribunal but that of the *Court of Session*. A part of these exemptions continue open and undecided ; and the remainder owe their existence to no authority, but a single judgment of the College of Justice, in favour of itself.

This sentence was pronounced upon the 23d of February 1687, against the express enactments of several statutes of Parliament, acts of Privy Council, and even of acts of sederunt of the Lords of Session themselves.

The City of Edinburgh, it is presumed, would have been well pleased to have rendered her grateful acknowledgments to the College of Justice, for their consent to the abolition of the exemptions pointed out in the Plan, under the character of legal franchises of
that

that Body.—The authors of the Plan, against their inclination, are reduced to the necessity of declaring, that the request made to the Faculty did not go to the surrender or diminution of their *just rights*; and it is now to be contended, that the exemptions claimed from the following articles, do not, nor ever did, constitute a part of the privileges of our Supreme Court, viz.

Ministers stipend, termed Annuity.

Poors money.

Impost upon liquors.

Expence of cleaning and lighting the streets.

In order to distinguish these particulars from the undoubted immunities and privileges inherent to the Body of the Law, it is judged most expedient to present the Public with a plain, succinct, progressive account, of every particular, that has been either granted, enjoyed, or claimed, under these characters, from the institution of the College of Justice to the present time,—beginning with

ORIGINAL PRIVILEGES.

The plan of the College of Justice was formed and executed in the minority of James V. under the regency of John Duke of Albany.

The charge of the judges of the Old Session had been honorary:—Those of the new institution, were to dedicate the best part of their time and attendance to the distribution of justice; and, therefore, it behoved them to have an established fund of support.

The King's patrimony not being in a condition to afford new provisions; it was determined, that the clergy should contribute the necessary sum out of their benefices*.

A great

* Quanta ad illos alendos satis videbatur.—*Lesleus Episc. Ross.* p. 417.

A great party of the ecclesiastics, with the celebrated Gavin Douglas, bishop of Dunkeld, at their head, dissatisfied with this arrangement, carried the matter by appeal to Rome.—There the business came to be settled by accord; the chief condition of which was, that the Judges of the new Court or College, should be chosen equally from the spiritual and temporal Estates, and that the President should always be an ecclesiastic.—At the same time, the Pope consented to ratify the erection, and to issue the compulstors of the Church, to insure the payment of the sum agreed upon.

Spottis. Hist.
p. 68.

The union of any number of persons occupied in one employment, constitutes a *College* *. Such are the College of Cardinals, or sacred college,—*Le College des Avocats*,—*Le College des Secretaires du Roi* in France,—The College of Herald's, &c. in England,—Colleges of Literature every where.—The selection of Judges and Lawyers, made at this period in Scotland for the constant determination of the civil affairs of the kingdom, was with much propriety termed *The College of Justice* †.

It is generally believed, that the institution was formed with an eye upon the Parliament of Paris. Though neither *Leslie* nor *Buchanan* take notice of this circumstance, the language, the technical terms, and the forms of these courts, afford, by their conformity, intrinsic evidence of the truth of the opinion commonly received.—*John, Duke of Albany*, had been educated in Paris: He was a stranger to the manners and customs of Scotland; and many circumstances concur to demonstrate, that the erection

B

of

* *College* was the general name of corporations and communities among the Romans—"Collegia Romæ certa sunt, quorum corpus Senatusconsultis, atque Constitutionibus Principalibus confirmatum est."—*L. 1. ff. Quod cujusque, &c.*

† *Nec in Curias sive Collegia vocentur inviti.—De Veteranis.*

of the College of Justice was planned and patronised by this nobleman, in order to assimilate the Scottish laws and manners to those with which he himself had been accustomed from his infancy.

Grand Encyc.
wide Parliament.

The Court of Parliament of France had, like our Session, been ambulatory till the 14th century, when it was stationed in Paris.—The parliaments of the provinces, modelled after that of Paris, continued moveable among the towns under their own jurisdiction for a long period after, at the pleasure of the King.

The charges of the Judges, like our own Court, had been honorary.—The want of provision, therefore, was made up by *privileges* and *personal distinctions*, more grateful to the genius of the French nation than money.

The chief of these were, that the members of the Parliament of Paris could only be judged in civil affairs by their *own court*. This was carried so far, that, according to a received rule, it behoved *the pen to fall out of the hand of an inferior judge* * the moment a member of the superior tribunal appeared to be even incidentally concerned, i. e. in the middle of a deposition, a pleading, an act, or other procedure. To this was added a dispensation from making homage in person,—exemption from the *ban* and *arrière-ban*, or the performance of military services under their feudal superiors,—from the *seigneurial* rights of lands held of the Crown,—from the *tailles*, *corvées*, *peages*, *subventions*, *aides*, and *gabelles*.—Nothing could be more flattering to Messieurs of the Parliament of Paris.

After the settlement already mentioned had taken place with the clergy, for the erection of a College of Justice in Scotland,

Pope

* La plume doit tomber des mains.

Pope Clement VII. issued a bull for carrying it into execution. This bull is dated in the year 1531, and bears to have been granted upon the application of John, Duke of Albany, in the name of James V. *

The sum thereby imposed upon the benefice annually, was 10,000 ducats of the Chamber, equal to 1400*l.* Scots, which, at that time, was equal to 350*l.* Sterling.

According to Buchanan, the first federunt of the new court was held at Edinburgh in May 1532.

In consequence of the grant of Pope Clement, the College of Justice was authorized in Parliament, and letters-patent transmitted to Paul III., the successor of Clement, containing a particular account of the institution, and a request for a confirmation of it.

These letters-patent requested, that besides the contribution from the Benefices, the *President* and *fourteen Judges* then in office, might be excoemed from all tenths, contributions, collections, exactions, or subsidies, and all burdens ordinary and extraordinary, imposed by Royal or Apostolic authority, even of any contribution towards the holy war, or expedition against the Turks †.

Paul

* The words of the original are, " Sane cum, sicut dilectus filius nobilis vir Johannes Albanie Dux, noster secundum carnem affinis, *dicti Jacobi Regis nomine* nobis exposuit; prefatus Rex benigno subditorum suorum regimine, et ut in Regno suo justitia mature et securius ministretur, cupiat in ipso Regno *unum Collegium proborum et literatorum virorum*, per ipsum Jacobum Regem et successores suos prefatos eligendorum, institui."—*Vide the Bull, App. to Keith's Hist. of the Church.*

† The words are, " Que ab omni jurisdictione ordinaria, ac ab omni decima contributione collecta, exactione ac subsidio, etiam caritativo, oneribusque ordinariis et extraordinariis, quavis etiam Apostolica auctoritate, etiam regia instantia, et ex quibufvis causis, etiam expeditionis contra Turchas et Infideles, seu alias quomodo-libet pro tempore impositis et imponendis, libere, immunes et exempte sint."—*Proceff. super Bulla, Keith's Appen.*

Vide
Processus super
Bulla.—Keith's
Appen.

Editio Rud.
vol. I. p. 495.

Paul III. directed a new and very special bull, confirming the request in the letters patent, and all that had been done relating to the College of Justice. It is dated in March 1534, and contains the following plenary exemption from the general ecclesiastical jurisdiction: " Et insuper cum juxta institutionem Collegii et conventionem hujusmodi, Presidens dicti Collegii semper Prelatus Ecclesiasticus, et quattuordecim persone predictæ Collegium ipsum justitiæ constituentes, simul et continuo residere, ac indies justitiæ Regnicolis predictis ministrare sint astricti, ne eos a civitate, oppido aut alio loco, in qua, seu quo, eos collegialiter pro tempore residere contigerit, ad alia loca quovismodo in judicium a quibuscunque trahantur, Presidentem et quattuordecim Senatores Collegii hujusmodi pro tempore existentes, *quamdiu actu Senatores extiterint*, ac eorum Clericos, Scribas, Nottarios et Advocatos *pro tempore descriptos*, et ad actuale exercitium admissos, nec non reliquos dicti senatus officiales necessarios, similiter pro tempore existentes, *dum in exercitio hujusmodi officii versabuntur*, ab omni jurisdictione, superioritate, dominio, imperio, potestate, preeminentia, visitatione et correctione quorumcunque Archiepiscoporum, Primatum, &c. ac sub beati Petri et sedis Apostolice ac nostra protectione suscipimus."—A special commission is next given to certain Prelates, to determine the spiritual causes of the College of Justice.

This bull was executed in the ecclesiastic form, by the Cardinal Protector of Scotland, in the 1535*.—It proves, that the College of Justice had been fully established before any notice of it appears in the statute-books, and points out the origin of the immunities

* *Vide Processus super Bulla.* Keith's Append.—The originals are in the Laigh Parliament House.

unities in point of *jurisdiction*, together with that of the *communication of the privileges* of the Court to its inferior members.

Upon the King's arrival at majority, it was judged necessary to ratify *articulatum* the institution of the College of Justice, which was accordingly done in the 1537.

Upon the 14th March 1540, the King and Parliament "ratified
" the confirmation, ratification and approbation of our holy father
" the Pope, of the erection of the College of Justice, and of the gift
" of all benefices and rents assigned by the Pope to the sustentation
" of said College, and all privileges granted and to be granted by
" our said holy father; and wills the same to be sicklike as in *any*
" *other college of justice in other realms.*"

Black Acts.

In June 1540, a declaration appears in the records of Parliament, intituled, *The King's good mind anent the Lords of the Session.*

This is not an act of Parliament, but a *letter of protection* from the King.—These letters were, at that period, common and necessary.—They placed the persons or communities protected, in a situation more favourable than other lieges, and subjected the breakers of them to peculiar fines and punishments, upon which account they were frequently purchased from the Crown*.

The words of this declaration, so far as relate to the present subject, are: "Attour, because the saids persons man await daily
" upon our said Session, except at feriat times, and suld be there-
" fore privileged above others; herefore we have exeemed, and
" be the tenor hereof exeems them and every one of them, baith
" spiritual and temporal, fra all paying of taxes, contributions,
" and other extraordinary charges, to be uplifted in ony time
" coming, and fra the bearing of ony office or charge within
" burgh, and outwith, bot gif it be their ain free will and con-
" sent."

C

By

* Vide James I. Par. 2. cap. 134.

By these grants it is evident, that an *original distinction* was made in the privileges of the College of Justice.—To the Judges were given the whole exemptions, both in *point of money* payments, and of jurisdiction; but, to all the other members, no more was intended to belong, but the *freedom from inferior jurisdiction* alone.

Even this could not be claimed by any of those individuals, except during the time of their actual employment; and the reason assigned, does not denote so much an honorary franchise, personal to the members of Court, as it regards the benefit of the community at large, which was concerned in the business of the Supreme Court being allowed to go on without interruption.

This is the more remarkable, in so far as the other members of Court were, even in the 1537, few in number,

Ten advocates only were, by the regulations of Parliament, to be admitted, and of that number, no more than *eight* had been *de facto* admitted; and it is recommended to those eight, “to procure for every man for their wages.”—The attendance, therefore, even of the lawyers of Court, was considered to be for their own proper advantage, and did not come under the reasons of the exemptions granted to the Judges.

This precisely agrees with the progress of the privileges of the Parliament at Paris.—At first they were few, and personal to the Judges and Great Officers alone; and it was only in the course of time, and by a perpetual struggle of the individuals for distinction, that they were made to descend beyond the reasons of their original creation.

The privileges of the College of Justice were ratified in the second Parliament of Queen Mary, “in sicklike manner, form, and effect, as it was in unquhil our soveraine Lord’s time that last deceased, and finfine.”—No other acts of this Parliament have been printed.

In the act 1555, anent removings, *advocations* are discharged to be taken by the Lords from inferior judges, "excepting the causes" belonging to the Lords of Council, and their advocates, scribes, "and members."

But notwithstanding of the special exemption of the Judges from *public taxes*, the matter seems, even at this period, to have been called in question by the Queen's comptroller: And by a decision preserved in Balfour, dated in the 1564, it was found, That *all ordinary Lords of Session were free.*

Lord Provan
2d comptroller,
Balfour, p. 270.

The Judges, at an early period, were inclined to communicate the whole privileges, personal to themselves, to all the members of Court under them; and this they did, according to the authority of the margin, by two several acts of their own, made under the authority of the then regent the Duke of Chattellherault, (*gubernatore presente*), wherein it is declared, "That the Lords of Session, advocates, and scribes, (*i. e.* the clerks of Session), stood excoemed "from all taxes, contributions, and passing to raids or hosts, and "that it should be lese-majesty to hurt, strike or wound any of "the said persons; and in terms of these acts, decisions of the "Court followed also *in presence of the Governor.*"

Hope's maj.
pract. voce Ses-
sion.

Two other decisions appear in Balfour, which, it is probable, were pronounced in consequence of these *acts of Session*, whereby the whole privileges, formerly competent to the judges, seemed to have extended to the advocates, scribes, writers to the signet, and other members depending upon the Session, who are found to be free of all state taxations or impositions, raised for any common cause concerning the well of the realm, or any other private cause or causes.—15th December 1565, the Advocates against Edinburgh; 20th November same year, Edinburgh against Mr. John Moscropt.

Balfour, p. 270c.

These decisions regard the quota of Public tax which the town of Edinburgh wished to raise from the members of the College of Justice.—

Justice.—At that time there were no burgal impositions, excepting the petty customs of the markets, and some dues at the ports of New-haven and Leith.

From other decisions of the same period, it appears, that the point of jurisdiction was also called in question; but it was found, “That no Lord of Session, advocate, scribe, or writer “to the signet, may be called in any action or cause, before any inferior judge within this realm, but before the “Lords of Session allenary.”—10th December 1561, Laird of Lethington against the Sheriff of Lothian; and 20th of November 1567, Abercromby.

Balfour, p. 207.

In the 1582, when the reformation of religion was complete, the spiritual causes of the College of Justice could no longer be determined by special commissioners from the Pope, as formerly; and therefore, the privilege of exclusive jurisdiction was found to extend to causes spiritual, ecclesiastical and consistorial.—Earl Bothwell against Maitland.

Colvel.

Upon certain occasions the Lords have, for their own convenience, used a little freedom with this capital privilege.

Finding business devolve upon them too fast, they were pleased, by an act of sederunt, to direct processes of molestation to be brought before inferior judges upon the spot, which obtained the sanction of Parliament.—The Lords declare, “That the ordinance then made, should in no ways prejudice the Lords of Session “and College of Justice, and their members; but that they have “reserved their privileges to pursue their actions before the said “Lords or other ordinary judges, according to accustomed use before the making said act.”

Ja. VI. par. 2.
c. 42.

Sir George M'Kenzie had made no enquiry into the history of the institution of the Court, or the nature of the privileges originally conferred upon it.—He imagined, that even the point of jurisdiction

jurisdiction depended upon this act, and that other one relating to *removings*.—Sensible, therefore, of a defect in the title, he observes upon the act of Queen Mary, “That though the reasons of advocacy “seems only to hold in *removings*, yet they hold generally in all advocations.”—And upon the statute last mentioned, “That though “it was alleged the words thereof were astrictive, and so the “members of the College of Justice could not advocate this cause “from inferior courts, except in such cases only as they could “prove use and wont; yet these words are found exegetick, because of *an old accustomed use granting them that privilege*.”

Such are the unsatisfactory reasons which must be given by men of the first abilities, when they go no farther than the mere words of statutes.

Leave is here to be taken of that ancient and original privilege of the Court of Session, *i. e.* *the freedom from all jurisdiction but its own*, which remains unimpaired to the present moment.

It ought not, however, to pass unnoticed, that a disposition to enlarge it has been several times indicated.

Under this head may be ranked, without offence, the extension of those rights to the *widows of Lords of Session, and members of the College of Justice*, who, by several decisions, were found entitled to advocate causes from the judges ordinary, in the right of their husbands*.

Of much the same nature was the more modern determination, which sustained the objection of privilege pled by a member in the Abbey, who had fled from the diligence of his creditors.—Thus, the principle of an institution is often lost with its history; and men, from dispositions natural to the species, mistake privileges, originally conferred upon them for the good of society at large, to be distinctions of honour, or rewards for merit, inherent in their persons.

D

Being

* Analogies from the Roman law—“*Mulieres honore maritorum erigimus, genere nobilitamus,*” &c.—*De Dignit.*

Dist. Dec. vol.
I. p. 151.

Jan. 11. 1710.
Anstruther contra Gordon.

Being now to proceed to the particulars of the several exemptions claimed by the College of Justice, from national and local taxes, since the middle of the sixteenth century, the best rule of arrangement seems to be, the simple order of time in which they respectively came into question,—beginning with that of

NATIONAL SUPPLIES, and ASSESSMENTS.

IN the books of sederunt, a letter from Queen Mary appears recorded, 2d June 1562:—" We understanding, that " the Senators of our College of Justice, instituted be our maist " noble father, were, in all time bygone, excoemed free of all taxes, " inquisitions, and charges whatsoever, of their lands and benefices, excepting bishoprics and abbacies; and therefore, the collector of the 3^d of the benefice is ordered not to levy any thing " from the benefices of the Lords, bishoprics and abbacies excepted."

The privileges of the College of Justice were ratified by c. 174th of the 13th Parliament of James VI.—The words are, " All and " whatsoever acts, statutes, constitutions and ordinances, made " be his Majesty or his predecessors, in favors of the Senators of the " College of Justice, and members thereof, sen the first erection " of the said College to this present day and date."

The immunities thus ratified, are confined to those held by special grant from King and Parliament: No sanction is thereby given to any additions or extensions introduced either by the *decisions* before stated, or by the *acts of Court itself*.

A general taxation was imposed, by act 281st of the 15th Parliament of James VI. *anno* 1597.—The King and his States " annull and discharge all privileges and immunities, whereby " any person might think themselves free of payment of the tax then " imposed,

"imposed, excepting allenarly the privilege of the *Lords*, and
 " *Members of the College of Justice*, whereunto his Highness and E-
 " states will in no ways derogate in any thing."

Under this clause, the whole of the then members of the Col-
 lege of Justice were, or ought to have been exempted. But the
 words seem to have been inserted *per incuriam*; for, in the next
 public imposition, authorized by c. 2d of the 23d Parliament of
 the said Prince, the error is corrected. The Estates " annul all pri-
 " vileges and immunities whatsoever, whereof any person may
 " think themselves free of payment of the said taxation, the pri-
 " vileges granted to the *ordinar Senators of the College of Justice*
 " excepted."

Thus the exemption from the national taxes was again *confined*
to the terms of the original grants, and the just distinction revived
 between the *Judges* and the other members of Court.

The old contribution from the ecclesiastic rents, had been found
 inadequate to the support of the Judges; and therefore, upon the
 abolishing of the power of bishops, a share of the quots of testa-
 ments, and other emoluments of the commissariat, were granted
 in addition to their support.

At the restoration of the episcopal hierarchy, the Lords of Ses-
 sion, to gratify James VI., yielded up these emoluments; and, in
 remuneration, an act passed for giving them 10,000 l. Scots annu-
 ally *out of the customs of the kingdom*, to be distributed *secundum ra-
 tam residentie*, and no otherwise.

A freedom from the public taxes was at that time a matter of
 consequence to the Lords of Session. Accordingly, in the tax
 granted to Charles I., 1633, the immunities are confined to *their*
persons in the same manner as in the preceding reign.

A new tax was found necessary, immediately after this, to make
 good and augment the provisions of the Lords, which had become
 deficient:

Book of fede-
 runt, April 13.
 1564.

Mar. II. 1629.

deficient: It was therefore imposed at the rate of 10s. *per* pound upon the old extent. By this statute all immunities are discharged, those granted to the *ordinary Lords and Senators of the College of Justice*, and of the lands belonging to hospitals, excepted. The custom being general all over Europe, that every prince should confirm the privileges granted by his predecessor, Charles I., anterior to his doing so, with great propriety required the Lords to “transmit the particulars they would have confirmed, which, he “says, being sent to him, and found reasonable, he shall confirm, “and order the same to be passed in Parliament.”

The particulars do not seem to have been condescended on; for the act immediately succeeding, ratifies all the “privileges, freedoms and immunities made and conceived in favour of the Senators of the College of Justice by any of his Majesty’s predecessors.”

The expression of this statute is obviously defective: It implies, That no privileges had been granted to any *but the Lords*, which is not conform to the fact; but it proves, at the same time, that the *exemption from the national taxes*, which had been upon several occasions extended to other members of Court, was not an established part of the privilege of the College of Justice.

The commotions which immediately followed, gave birth to new modes of raising supplies. However oppressive and contrary to the rights of the subject, they were notwithstanding adopted by the patrons of liberty. Such were the laws of *excise, loans*, and the burdens at that time termed *maintainence*, that is, the distribution of certain quotas of troops among the counties and burghs, to be maintained by a general taxation upon estates real and personal for a time limited.

The excise and custom laws made no exception either of the Senators or members of the College of Justice, though sometimes *universities* are expressly declared to be free.

The

The first act of *maintainence*, passed in February 1645, contains the following clause : “ *Item, That all heritors of land within burgh,*”
 “ *or pendicles and liberties thereof, all burgesses, all traffiquers exer-*”
 “ *cising any trade, shall be subject to taxation within burgh, but*”
 “ *prejudice for the time to come to the whole members of the Col-*”
 “ *lege of Justice their rights, privileges, and immunities, where-*”
 “ *with for the present, in regard of the present exigence, they do*”
 “ *dispense.*”

Succeeding acts of the same kind make a reference to this one ; but the salvo is limited *to the Lords of Session alone.*

The College of Justice being superseded during the usurpation, by the commissioners of Cromwell, was restored by the King ; and, in order to heal its wounds, the following ratification was passed in more ample form than any preceding one :—“ Our Sovereign Lord
 “ considering that nothing is more necessary and of more universal
 “ concernment than the administration of justice, and, in order
 “ thereto, that the Judges, Advocates, Clerks, and other members
 “ of the Supreme Judicatory, should be faithful, able, and quali-
 “ fied persons ; and for their encouragement to serve the country
 “ in their respective stations and places, and to undergo the great
 “ toil, trouble, and expence of time, and otherwise for enabling
 “ them for and during their service therein, it hath been the wis-
 “ dom and practice of all princes and nations, and in special of
 “ his Majestie’s royal progenitors, to grant to them diverse liber-
 “ ties and privileges, as is evident by *many acts of Parliament* and
 “ statutes concerning the privileges and immunities of the Col-
 “ lege of Justice, and members thereof, granted, renewed, and
 “ ratified from time to time : Therefore his Majestie, with advice
 “ and consent of his Estates of Parliament, ratifys and approves
 “ all and whatsoever liberties, privileges, and *immunities, given and*
 “ *granted by his Majestie’s royal predecessors, to and in favors of the*

" said College of Justice, and of the Senators, Advocates, Clerks,
 " Writers to the Signet, and remanent members of the same, or
 " *whereof they have been in use and possession in any time bygone* ; to-
 " gether with all laws, acts of Parliament, statutes, and constitu-
 " tions made and conceived in their favors ; holding and declar-
 " ing this present ratification to be as sufficient, as if all the fore-
 " saids privileges, freedoms, and immunities, acts, statutes, and
 " grants of and concerning the same, were in special and at
 " length exprest herein : And his Majestie, with advice and con-
 " sent foresaid, ordains and declares, that the whole privileges, li-
 " berties, and immunities foresaids, granted and belonging to the
 " *ordinary Lords and Senators of the College of Justice*, shall be ex-
 " tended, belong, and apertain to, and be enjoyed by the *Advo-*
 " *cates, Clerks, Writers* to the Signet, and remanent members of
 " the said College of Justice, in all time coming, notwithstand-
 " ing of whatever act, custome, or practice to the contrary."

Act 23d of
 Charles VI.

This is the broadest and most comprehensive statute ever passed
 in favour of the College of Justice.

The fashion of the times, was to revive and add new force to
 all the institutions and consuetudes of our Monarchy, which had
 been attacked, weakened, or innovated by the late usurpers.—In
 this light the College of Justice was particularly regarded ; and,
 to unite the whole in one interest, the ancient distinction of the
 Senators and superior members is removed, and the whole privi-
 leges communicated to the whole members of that body.

The ratification, therefore, above engrossed, is held out,
 in all after questions, as the *Magna Charta* of the Court.—It
 turned out, however, to be little more than words of compli-
 ment.—A tax was imposed, for the special purpose of supplying
 the deficiencies of the fund provided for the support of the Judges :

And

And the convention of Estates, in granting a supply to the King, for the support of the war with Holland, excepted the properties of the Lords, and other members of the College of Justice.

In the act of supply granted for the year 1667, the Lords are made Commissioners, and the *lands of Colleges and Hospitals* alone are excepted; and consequently, the whole members of the College of Justice were taxed like other subjects of the realm.

Three years afterwards, the privileges, not of the College of Justice, but of the ordinary Lords, were ratified.—This statute recites, that the original exemption from taxes, was bestowed by King and Parliament upon *the Lords of Session*; that this privilege had been ratified by succeeding Parliaments; and therefore, it is thereby ordained, “*That the ordinary Lords of Session shall bruike*” and enjoy their said privileges and immunities from all burdens “*imposed or to be imposed by that or any other Parliament.*”

C. 8. Sess. 2.
2d Parl. of
Cha. II. 1670.

Thus the College of Justice was brought back to the same situation it had been in prior to the Restoration, *i. e. the exemptions were once more limited to the Judges alone.*

Nor was it regarded, even in their persons; for, the very next year, the Judges were obliged by the Comptroller *to grant bond for the supply*, and only got clear by a particular application to the King, whose answer is recorded in the books of *federunt*, ordering the President and ordinary Lords to be free of their proportions of that tax.

1671.

From this time downwards, the exemption continued to be left out of all the Money Acts; and the Parliament 1668, in imposing their supplies, declared, that no person liable should be freed; and beseeched his Majesty, not to grant exemptions in favour of any person or persons.

3d Parl. of
Cha. II. c. 3.

Orders were accordingly given to the Treasurer, *not to exempt the Lords of Session*;—of this tax the Lords accordingly paid a part.

But

Acts of Sed. 1
vol. I. p. 137.

But the measures of Government requiring extraordinary support, the Duke of Lauderdale obtained a letter from the King, dated 10th November 1684, exempting them from by-gones, and from the two years then to come, of the imposition.—This letter mentions the recommendation of Parliament against exemptions,—and an application of the Lords of Session, stating their privileges as granted by James V., and ratified by his successors:—“Therefore, and for “their extraordinary services, the exemption is directed to be “continued to *the Lords and their successors*.” But it is ordered, that no other persons be freed from the payment of any taxations, supplies, and burdens imposed upon the other subjects of the kingdom.

These are the letters Sir George M’Kenzie alludes to in his Observations upon the institution of the College of Justice, whereby the Lords were in use to get free, after the exception in their favour came to be left out of the Money Acts.

The first supply granted to James the VII. continues silent as to the Lords; and yet, in the ratification of the privileges of the College of Justice, *passed at that time*, the act of Charles the II. concerning the immunity of the Judges, is particularly referred to.

1st Part. of
James VII.
c. 19.

The College of Justice claimed exemption from all the taxes of Edinburgh; and, in order to ascertain the nature and extent of them, Sir George Lockhart, then President, and the other Senators of the College of Justice, ordinary and extraordinary, presented a bill of suspension against the several demands of the City.—Afterwards, an action of declarator was raised at the instance of the Advocates, Clerks, and Writers to the Signet, for having a variety of exemptions and immunities, therein condescended on, properly ascertained.—During the dependence of these questions, a second bill of suspension was offered

offered by the Advocates and Writers against the then Magistrates of Edinburgh, and John Hunter their collector of supply ;—which three actions were remitted to each other.

When this point, *i. e.* the immunity from the national assessments, came to be discussed, the Advocates, &c. stated the several statutes and ratifications of Parliament before mentioned, and particularly, the act of James the V., and the bull of Pope Clement, with the ratification of Charles the Second; and pled, "That, as members of Court, they were entitled to "the whole privileges thereby bestowed."—It was answered for the Town, "That these exemptions were personal to "the Judges of the Court themselves; that the act 1661, "was only a general ratification; and that, when the Judges "themselves were purposely left out of the Supply Acts, such as "the Parliament 1670, even the Lords of Session did not *rely* "upon the general laws, but procured *special letters* from the King, "declaring them free; and it were a strange thing, that, when "the College of Justice is become so flourishing, as to acquire "lands both in city and country through all the parts of the kingdom, that they should be excoemed; for this behoved to be a loss "to the King, or to be laid on the neighbours, which were most "unreasonable."

This debate was advised upon the 14th of January 1687; when the Court, upon the report of Lord Kemny, found, That "the members of the College of Justice are liable to be stented "for the King's supply, according to the rents of the houses belonging to them, as other inhabitants of the burgh: Found the letters orderly proceeded, and ordained them to be put to execution "against deficients."—Fountainhall says that the Lords exempted themselves; but that circumstance does not appear from the decret.—Fountainhall, vol. 1. p. 40.

The members of the College of Justice reclaimed, and insisted upon certain alleged inequalities in the mode of stenting.—The books were produced, and the question came to be determined with the other points in dispute, February 1687.—The words of that part of the sentence, relative to the national taxes, are, “And the Lords ordain, That where a taxation or cess is imposed by acts of Parliament or convention of Estates, to which the members of the College of Justice are or shall be liable, that there be a special and distinct stent made up—on the Town and suburbs for the quota imposed, and more only as may defray the incident charges of collecting the same, wherein no exemption shall be given to the *Magistrates*, *Stent-Masters*, or other persons; but that they be stented for the proportions of these impositions, as well as other inhabitants: And likewise, that the tenements belonging to trades be stented, and the Town’s common good, where the same consists in land or feu-duties, and does not bear burden with the shire; but prejudice to the town of Edinburgh, if they think fit, to lay on the proportions of those who have been in use to be exempted, upon their own neighbours, but not upon any members of the College of Justice.”

To remove all disputes in time coming, an Advocate and Writer to the Signet for the time were appointed to meet with the Stent-Masters for the different quarters of the town, at the time when the annual survey should be made.

From the meeting of the committee of the Estates, downwards, no immunity was given, or appears to have been sought, either by the Lords, or any other members of the College of Justice.—And thus the *original exemption*, to which our Supreme Court had an undoubted right by *special grants*, yielded to reason, and to the good of the Public.

The

The next part of the privileges claimed by the College of Justice, consists of a total exemption from

BURGAL TAXES,

Or, strictly speaking, from

The whole BURDENS imposed within the City
of *Edinburgh*.

A BURGH, as originally constituted, was an association of individuals, for mutual convenience and mutual defence.—*Burg* is an ancient word for a rock, castle, or place of strength: And it has been justly remarked by antiquaries, that our principal towns in this country owed their origin to the King's castles, and thence came to be termed Royal Burghs; such as *Edinburgh*, *Roxburgh*, *Stirling*, *Dunbarton*, &c. &c.

After these societies were erected into corporate bodies, and distinguished by special privileges from the Crown, individuals applied the honour or the benefit to themselves, and formed their personal importance upon the rank of the body to which they belonged.—Hence that watchful jealousy which for a long period marked the conduct of the inhabitants of the burghs in general, and of every lesser body which had formed itself under the protection of the greater ones.

The hospitality, and general convenience, which in time were to be enjoyed by the country from the number of its towns, appear to have been long restrained, by the unsettled and barbarous state of society.—Every town was watched and warded by its inhabitants, with as much care and attention as the most regular forts now are by their garrisons; and no townsman, at the period alluded to, could afford lodging to a stranger for above

twenty-four hours, without giving up his name, and becoming *borch*, or pledge, for the consequences.—“No man,” say the *Leges Burgorum*, “dwelling within burgh, shall harbour in his house any stranger longer than a night, except he will give a pledge for him, or he himself will be pledge for him.”—In order that individuals might have a patrimonial concern in the safety of the place, it behoved every burghess to be possessed of real property, or *bigged land*, within burgh; and it was one of the articles annually to be enquired into at the Chamberlain air, “whether there were any persons within burgh, who used and usurped the freedom thereof, without being so qualified.”

This military strictness relaxed under a change of manners.—Properties within burghs passed into the hands of upland, or landed men.—The security and convenience afforded by towns, induced a number of people to reside there who were not burghesses, nor, properly speaking, members of the community:—They therefore considered themselves as unconnected with the interest of the burgh. At first they were not trusted with watching or warding; and when that duty came to be looked on in a different light, they refused to perform it, or to contribute in any shape to the necessities of the place.

The charter of erection of the College of Justice, granted by James V. * and the letter of protection afterwards granted by the King in the 1537, specially “exceem the Senators of the College of Justice fra the bearing of any office or charge within burgh, or outwith, but gif it be their awn free will and consent.”

The freedom hereby bestowed, was given upon the same principles as that of the jurisdiction, *i. e.* for the benefit of the nation at large, whose direct interest it was, that the Judges of the
Supreme

* The original must be in the records of the Roman Chancery, as the Papal bull proceeds upon it.

Supreme Court should not be drawn aside from the administration of justice by any other species of duty.

This freedom therefore is universal, both as to burghs and to land; it has no relation to the city of Edinburgh in particular, but it has been enjoyed, from the institution of the Court to this moment, without interruption.

Edinburgh, and other towns, though long happily relieved from all apprehension of public enemies, must still be watched and warded, for the internal peace and security of the inhabitants. This is presently performed in Edinburgh, at the annual expence of 1250 l. Sterling, which is cheerfully paid by the inhabitants of the place; and so very attentive have the authors of the late Plan been to the just and undoubted privileges of the College of Justice, *that the exemption of its members was thereby proposed to be preserved entire, and no part of the tax of watch-money to be levied upon them.*

Proposals, p. 5.

The estate of the corporation of Edinburgh, called the *Common-good*, at the institution of the College of Justice, consisted of the property lands granted for the support of the City by successive princes, the customs of markets, upon the goods of unfreemen, feudal casualties, and port-dues at the harbours of Leith and Newhaven *. The public and military duties of the town being performed by the inhabitants, no special taxes on the members of the community had at that time become necessary. If any such impositions did exist, they suffered no variation from the terms of the grants erecting the College of Justice.

It is acknowledged, that after a search for the purpose, nothing of the kind has been found; and therefore, for the present, it is admitted that the College of Justice must have been considered as standing in the same predicament with the other inhabitants before-

G

before-

* *Vide* the Golden Charter of James VI. to the City, containing a recital of all the grants of his predecessors.—Mait. Hist.

before mentioned, who were not burgesſes of the City, nor, according to the ideas at that period, members of its community.

The first matter which in the order of time came to be disputed, was

P O O R S M O N E Y.

THE maintenance and regulation of the poor was first to be seriously attended to in England, under the reign of Elizabeth; and the act of the 14th of that Queen, is generally held to be the original statute upon which all the laws relating to the Poor in our neighbouring kingdom have been founded. A weekly rate of payment is thereby established;—and the words are, “That the
“ Mayors, Shereffs, and Bailefs shall tax and assess *all and every of*
“ *the inhabitants* dwelling in all and every city, burgh, town, vil-
“ lage, hameler, or place within their limites and divisions, ex-
“ *cepting only lands of hospitals, and the houses of their poor.*”

Regulations for the same purpose were found to be equally necessary in Scotland at the same period; and therefore an act passed in the 1579 for the punishment of idle beggars, and *for the relief of the poor and impotent*. This act is drawn up in a style and manner entirely different from those of our other Scottish statutes. It is of an unusual length, and contains a great variety of regulations. Upon examination, it will be found to be copied from the act of Elizabeth, with the necessary variation of names and terms.

Power is thereby given “to the Provost, Baillies, and Judges
“ of the severall burghs and parishes of the kingdom, to tax and
“ stent the haill inhabitants within the parishes, according to the
“ estimation of their substance, without exception of persons, to
“ sik ouklic charge and contribution as shall be thought expedi-
“ ent

“ent and sufficient to sustain the said puir people; that collections
 “be appointed in every burgh, town, and parish, and the stent-
 “roll to be annually renewed: And it is enacted, That giff ony
 “person, being able to further this charitable work, will obsti-
 “nately refuse to contribute to the releef of the puir, or discour-
 “age others from sic charitable-like deed, such obstinate persons,
 “upon the complaint of the Magistrates and country Judges, shall
 “be committed to prison.”

By this act, the support of the poor is stated to be an indispensable duty incumbent upon the whole community, from which no individual ought to be free.—The members of the College of Justice were not exempted from that burden, either in the City, or any other part of the kingdom.

The Police of Scotland, at the date of the act of James VI., had not attained to a situation capable of receiving improvement in a systematic form; and therefore the act did not receive such universal execution as it ought to have done.—This appears from c. 149 of the 12th Parliament of the same Prince, ratifying the former statute, and “ordaining the same to be put in execution
 “in all parts of the realm, *as it is already taen effect within the*
 “*parts of the burgh of Edinburgh:*” And for that purpose, additional powers are given to the civil officers, and farther regulations introduced.—It is here worthy of reflection, that, to this slovenly neglect attending the execution of our laws, it is owing, that the Poors Rates, so much complained of in England, have been almost entirely excluded from this country. In this matter, England and Scotland have fallen into extremes;—the one has reared the maintenance of the Poor into a burden almost insupportable to the nation;—the latter has almost entirely neglected that branch of the police.

In the same Parliament, an act appears for subjecting to burgh stents, and to watching and warding, all trafficking merchants, notwithstanding

notwithstanding of any privileges, discharges, or exceptions granted by the King or his predecessors; and likewise, all such persons merchandizing in any burgh of the realm, *whether they be admitted free burghesses therein or not*;—"providing that the act be not
 "prejudicial to the Members of the College of Justice, and to
 "their privileges and immunities granted to them, or whereof
 "they have been in use in times bygone."

About eighteen years afterwards, viz. in the 1597, the acts relating to the Poor, before recited, were ratified, and the execution of them committed to the kirk-sessions.—Ja. VI. par. 15. c. 272.

In the 1579, all the residents in burghs were subjected to the common duties, whether they exercised merchandise or not.—

7th Parlt. of
Ja. VI. c. 259.

"For sameikle as there is diverse inhabitants that dwells and re-
 "mains within the free burghs with their families, and are of
 "reasonable substance, as als wa hes rents and livings within the
 "samin burgh, zit refuses to contribute for the enterteinement of
 "the puir, watching and warding within burgh, with the rest of
 "the nichtboures, or to bear their parte of sik uther dewties as
 "concerns his Majestie's service, *thereby living at liberty, neither*
 "*knewand the Magistrates in kirk nor policy*, to the great hind-
 "rance of his Majestie's service, and the haill realme: For remied
 "quhair of, it is stated and ordained, be Our Soveraine Lorde,
 "and the Three Estates of this present Parliament, That all sik as
 "hes their residence and dwelling within the said burrows be
 "their families, and may spend an hundreth pounds of zeirly
 "rent within the same, or stented be the discreet nichtboures to
 "be worth twa thousand markes in free guddes, fall be subjected
 "to be burdened with the rest of the inhabitants, *for the advance-*
 "*ment of the glory of God, his Majestie's service, and well of the*
 "*burgh* quhair they dwell: Providing always, that this act be
 "nowayes extended to sik as are exeemed for his Majestie's service,
 "as ane of ilk occupation for that cause, *neither to any persons that*
 "are

"are members of the Colledge of Justice, and admitted be the Lords of the Session."—

These are the statutes upon which the College of Justice have founded their exemption from *Poors Rates*.—But a few observations will suffice to show their insufficiency for any such purpose.

The statutes seem to have been drawn under the impulse of just indigation against that species of people, who resided in royal burghs, and, under pretence of not being members of the community, evaded all public duties and burdens.

The last act, in mentioning that these people refused to contribute to the Poor, does not allude to the *national Poors Rates*, imposed by the acts of the very same Parliament upon the whole inhabitants of the kingdom, but to those extraordinary contributions necessary within burgh, and usually laid on by authority of the Magistrates.—The same description of men are also subjected to *watching* and *warding* within burgh, with the rest of their neighbours, and to bear their part of such other duties as concerned his Majesty's service. Now, as it was an undoubted privilege of the College of Justice, to be free of watching and warding, a salvo of their *privileges* became necessary. But it never will be argued, that the words of this salvo bestowed any new privilege which the College at that time was not possessed of; and it has already been shown, that, in place of an immunity from the support of the Poor, they stood subjected to that duty by special and repeated statutes.—To reconcile the statutory part of the last act with the preamble, we must consider the *advancement of the glory of God* to be the same as the *entertainment of the Poor*; and that his Majesty's service, or the well of the burgh, is of the same import as *watching* and *warding*. The words of the proviso are purely passive,—“providing that this act shall not extend to any of the members of the College of Justice.”

That is to say, if the members of the College of Justice be at present

sent under no obligation to advance the glory of God, they shall not be obliged to do so in virtue of this act.—They are left in the same predicament as if no act had been passed, or as the people who were the immediate objects of it, and who lived at their liberty, *without knowing the Magistrates either in kirk or policy.*

Sir George M'Kenzie makes the following judicious remarks upon the statutes in question :—“ These acts of Parliament could “ only free from *watching and warding*, which are inconsistent “ with personal attendance; but should not be extended to *stents* “ and *impositions which were not usual before these acts*, since “ the general words of laws are ordinarily restricted to what ordi- “ narily happens at the time.—Also, that though these exemp- “ tions could secure against impositions laid on *by the Town*, yet “ they cannot secure against such impositions as are laid on *in* “ *Parliament*, by voluntary offers made by the subjects them- “ selves.”

This is the solid and just distinction, whereby all difficulties in the present subject are solved.—It shall be admitted, that the Town, by these statutes, as well as by the reason of the thing, are disabled from laying any burden or imposition, by their own authority, upon the College of Justice, for the benefit of the *common good*, the estate of the corporation, or for the Poor; to these, the inhabitants and burghesses only are liable. But, on the other hand, when a tax is imposed by public authority, and for public purposes, or purposes common to the whole inhabitants, it neither can nor ought to afford any exception to the College of Justice, that the Magistrates of Edinburgh act *ministerially* in making good the ordinances of the Legislature.

But, even supposing these general, inaccurate statutes, to have the effects which the College of Justice have endeavoured to impute to them, these effects, so far as relate to the *support of the poor*, are completely removed by the subsequent act 1600, intituled, *Ratifi- cation*

enation of the Acts against strong and idle Beggars:—“The King’s
 “Majestie and Lords of Secret Counsell, remembering how
 “there hes been diverse gude and loveable acts of Parliament and
 “Secret Counsell, made and published heretofore, for punishment
 “of strong and idle beggars, and relief of the poor and impotent,
 “and how the said acts hes received little or no effect or execution,
 “by the oversight and negligence of the persons who were nomi-
 “nated Justices and Commissioners, for putting of the said acts to
 “full and due execution, and that there was not a special penalty
 “appoynted and enjoyned to them who should be remisse and
 “negligent therein—”

16th Parl. of
 James VI. c. 19.

The former acts are therefore confirmed and fortified with new regulations and penalties.

In the third session of the first Parliament of Charles II., all the former acts are ratified and renewed, a stent-roll ordered to be made up for each parish, and *all heritors* to be subjected to an assessment, *the burgh of Ayr and its inhabitants only excepted.*

Cap. 16.

Sir George M’Kenzie remarks, that this last act, though an excellent one, was not observed.—It was not perhaps so completely executed as Sir George wished it to have been; but the fact is certain, that the regulations thereby enacted took place in a number of parishes, both within and without burgh,—and was particularly attended to in the City of Edinburgh, in manner to be afterwards noticed.

When the College of Justice raised their declarator in the year 1678, they did not demand or insist upon an exemption from the *Poors Rates*; nothing of that kind is either mentioned in the libel, or insisted on in the debate.—They concluded indeed to be free from *all stents or impositions* imposed by the Magistrates of Edinburgh, for the maintenance of the ministers, or upon whatsoever account.—But in condescending upon the special points at issue, they did not bring in the support of the Poor under the
 general

Vide Decreet of
 declarator.

general words; and the sentence upon that process in the 1686, is accordingly altogether silent upon that head.—In the 1676 the town of Edinburgh was so much oppressed by beggars and poor people from all quarters, that an act of Council passed, ordaining, that no inhabitant “should set their lands or houses within the City or “suburbs, that were not *landed gentlemen*, or members of the College of Justice, without a special ticket from the Baillie of the “quarter within which the lands lay.”

The evil, it seems, returned with greater force.—This obliged the Magistrates and Town Council, in October 1685, to pass another act, for putting into strict execution the several statutes of James the VI., and Charles the II., respecting Vagrants, Idle Beggars, and the Poor.—This proves that these statutes were not considered as being in desuetude, or in any degree weakened by the temporary neglect of those whose duty it was to put them into execution.

This matter of the support of the Poor, coming to be involved with another article of the police of Edinburgh, it is necessary to treat of them both together.

In the 1686, an act of Parliament was made for cleaning the streets of Edinburgh.—This statute recites “the inconveniencies “arising from the filth of the streets, and the number of clamorous beggars;” and therefore appoints the Magistrates to take effectual means for the removing of these nuisances; and, for that effect, the Lords of Session are authorised, with the advice and consent of the Magistrates, to impose such taxes upon “*all the inhabitants, burghesses, and others*, within the Town, Canongate, and “suburbs thereof, as they should find just and necessary for cleaning the streets, and purging the same of beggars.”

In virtue of the powers thus given, the Lords, in January 1687, by act of sederunt, authorized the Magistrates of Edinburgh

burgh to impose a stent of 500l. Sterling yearly, for the space of three years from Candlemas 1687, to be applied for the purposes of the statute.

This act of sederunt stands in the books immediately preceding the sentence upon the declarator of privileges, which followed in February thereafter.—The Court were sensible that the act of Parliament contained no exception in favour of the College of Justice, and that the members thereof were included under the words, *all inhabitants, burghesses, and others*; for it is a rule, that though general words cannot be constructed so as to bestow an exemption or immunity; on the other hand, their import admits of no limitation, when, in plain and strict sense, they go to cut off every pretension of that kind.—To get clear of the question, however, and not to prejudicate any point of their declarator, the Court politically made an offer, by act of sederunt, in the following terms: “And for the further encouragement of the
“Magistrates in this matter, the Lords of Session, for themselves,
“and likewise the Advocates, Clerks, Writers to the Signet, and
“other members of the College of Justice, have voluntarily and
“freely offered to be liable for payment of their respective proportions of the foresaid sum, according to the rents of the
“houses which they possess. It is always hereby declared, That
“this offer shall no ways prejudice the said Lords and remanent
“members of the College of Justice, as to their privilege of
“being free from all stents and impositions within the town of
“Edinburgh.”

This was *de facto* to determine the law-suit by anticipation; for if it was a privilege of the Lords and other members of the College of Justice, to be free of all stents within the town of Edinburgh, there remained nothing to decide.

An opportunity was thus taken, by a voluntary offer of a particular tax, to declare themselves free of all taxes.

In this case, which involved the Support to the Poor, as well as the Police of the Town, the objection did not exist, that the assessment was laid on by the authority of the Magistrates;—it was here imposed by the *Lords themselves*: and therefore, the meaning plainly was, that the members of the College of Justice, in their own opinion, were not liable to any payment for the benefit or improvement of the city of Edinburgh, but according to their own pleasure. This declaration, however plain, is not a determination of the point, but a *salvo* in their own favour; the only effect of which is, that no argument can be founded upon the particular fact, *of the assessment being then laid on* for subjecting them in future.

But as the matter was not touched by the posterior declarator, the point, of consequence, continued open and undetermined.

This tax amounted to 2 l. *per annum* upon the valued rents, and was kept upon the inhabitants in place of the contribution ordered by the former *Poors Laws*.

Besides this two *per cent.*, another assessment of 36 s. *per cent.* was also laid on, and levied for the purpose of cleaning the streets,—to which the whole inhabitants cheerfully submitted.

The College of Justice likewise, under conviction, that they could not, either in law or reason, plead for an exemption from this necessary article of public expenditure, taxed themselves by repeated acts of federunt, one in the 1692, for three years, and in the 1694, for five years more, at the rate of 5500 merks *per annum*.

The two *per cent.* imposed by the Lords for the Poor, in virtue of the act 1686, not being renovated, it became necessary to have recourse to the *general laws* subsisting upon that subject; and therefore, the Magistrates of Edinburgh with wisdom and propriety renewed their own former acts of Council, for the execution of the common statutes made in behalf of the Poor.—In this they were
seconded

seconded by the Lords of his then Majesty King William's Privy Council, who, in the 1693, issued general orders to all the civil magistrates of the kingdom, and to the Magistrates of Edinburgh in particular, *to execute the several statutes relative to the Poor, in the strictest terms, and without respect of persons.*—Public proclamations were every where made to the same effect.

Under this authority, and in obedience to the commands laid upon them, the Magistrates proceeded in levying two *per cent.* upon the whole inhabitants of Edinburgh, without any distinction of members of the College of Justice, in terms of law.

A bill of suspension, however, was offered against the payment both of the Street and Poor tax, 1st March 1695; but was allowed to ly over unpassed.—In the mean time, the consequences of these orders of Privy Council were so salutary, and the proceedings of all concerned so much approved, that, in July 1695, the following statute passed in Parliament.

ACT ANENT THE POOR.

“ OUR Sovereign Lord, with advice and consent of the Estates
 “ of Parliament, doth hereby ratify, approve, and revive all acts
 “ of Parliament, and acts and proclamations of Council, for main-
 “ taining of the Poor, and repressing of Beggars; and ordains them
 “ to be put to vigorous execution in all points. And further, em-
 “ powers the Lords of his Majestie's Privy Council, to take the most
 “ effectual course to make the said acts and proclamations effectual,
 “ conform to the true design thereof.”

In this manner, the Poors Laws were revived, explained and executed against the College of Justice, *long posterior to the sentence in their own favour in the 1686, and to the act of sederunt 1687,—taxing themselves under a salvo of their privileges.*

In this situation matters continued for some years; till the suspenders moved again in the business, and insisted upon their former bill being passed, the effect of which would have been, to stop the payments in the mean time, and to admit their defence to discussion in Court.

1710.

For this purpose, informations were ordered:—The paper presented upon the part of the College of Justice, sets forth, “ That the Magistrates of Edinburgh, having daily poynded the Advocates and Writers to the Signet, these several years bypast, and intending to do the like in time coming, for 36 s. unwarrantably imposed upon house-rent, under pretence of cleaning the streets, and for 40 s. *per cent.* for maintaining the beggars, a suspension had been presented, &c.—That the Magistrates, by the act 1686, were obliged to clean the streets, without any farther imposition than was thereby given; and that the act of sederunt following upon it, *contained a salvo of their privileges*:—That the after acts 1692 and 1694, imposing farther stents, had been done since the late revolution, *et parte inaudita*, and for the muck allenarly, and that they were contrary to the privilege of the College of Justice:—That the stent for the beggars is not laid on by the Lords of Session, but by the Magistrates themselves, *upon a general act of Council, anent the supply of the whole beggars of the kingdom*; which is expressly contrary to the act of Parliament 1686, empowering the Lords of Session to lay on the stent,—to the privileges of the College of Justice,—to the decret of the Lords of Session, February 1687,—and to the printed act of sederunt thereupon, whereby the members are declared free of all impositions of the Town of Edinburgh.”

“ Answered for the Magistrates, That the act of sederunt 1687 was only an explanation of the act 1686, ascertaining who were *inhabitants and others* within the town of Edinburgh; so that the College of Justice their offer to be liable, was only what they
“ were

“ were obliged to by the Lords interpretation of the said act of
 “ Parliament.—3th, Accordingly, the Lords having imposed three
 “ years *in anno* 1692, and other five years *in anno* 1694, upon the
 “ whole inhabitants, as well the College of Justice as others, they
 “ have clearly signified their meaning and interpretation of the
 “ said act of Parliament, as to the cleansing of the streets.—4th, As
 “ to the beggars, the act of Council 1693, is nowise derogatory
 “ from the Lords of Session their privilege in the said matter, but
 “ only an addition and accession thereto; and the Magistrates of
 “ Edinburgh were obliged to give obedience to the Council, as all
 “ the rest of the kingdom has done in the like cases; likeas, by
 “ the act of Parliament 1695, all the acts of Council anent beggars
 “ and the poor, are now ratified and approven, and so cannot be
 “ controverted.”

The College of Justice replied, “ As to the beggars within the
 “ town of Edinburgh, the said acts are general, and can nowise
 “ derogate from *the special acts and privileges* of the College of
 “ Justice.—They allow one half of all the collections at the kirk
 “ doors to be given to the heritors to assist them in the mainte-
 “ nance of the poor, which the Town has not, nor will not do in
 “ this case.—The College of Justice gives yearly most considerably
 “ to *their own poor*, to whom the Town denies all subsistence, and
 “ so cannot be concerned in the beggars.—These acts of Council
 “ are founded upon acts of Parliament which are *long prior* to the
 “ special act of Parliament in favours of the Lords of Session, and
 “ so cannot prejudice the privileges of the Lords, or College of Jus-
 “ tice, which cannot be taken away by any act of Council, who
 “ are not proper judges to cognosce upon private rights and privi-
 “ leges.—The *act of ratification* 1695, is likewise general, and *con-*
 “ *trived to take these privileges* from the Lords of Session and Col-
 “ lege of Justice, but is clearly saved by the act *salvo jure*.”

The cause must have been desperate indeed, when a Body so learned and respectable could suffer any of their members to set up such defences.—They also repeated the pleadings in the 1687; and as that ground must be gone over in the discussing the article of *Annuity* or *Ministers stipend*, it is unnecessary to say one word upon the subject at present.—The paper for the College of Justice concluded, “ That the bill of suspension ought
“ to pass, unless the Town of Edinburgh consent to fist execution
“ till June, that the said bill be discussed summarily with the said
“ College of Justice their declarator of privileges.”

By this is to be understood, that certain articles of the old declarator remained undetermined, and the action had now been revived in order to be conjoined with this new suspension.

No farther proceedings at law are to be traced in any record or writing belonging to the town of Edinburgh: But it is informed that private treaties were again set on foot; that the College of Justice, perfectly sensible that the merits of the question lay entirely against them, had recourse to the old policy, of avoiding compulsion by voluntary offers; and the Town, with their usual simplicity, allowed themselves to be persuaded into acceptance.

The tax for cleaning the streets, was given up by degrees.—Farmers began to discover that the soil of a town was worth the carriage to their lands; and undertakers appeared, who by degrees put that matter upon an easy footing.—No farther notice, therefore, is necessary to be taken of the article.

The result of the treaty about the Poor's Money, will appear from the following act of sederunt 1713:—“ The Lords
“ of Council and Session considering the trust and power
“ given to them by the 12th act, 2d session of James VII.,
“ for freeing and purging the streets, closes, &c. from clamorous and begging poor, and an overture made to them by
“ the

“ the Magistrates of the Good Town on the 5th of January last,
 “ whereby they *having already maintained, and undertaken far-*
 “ *ther to maintain all the begging poor within the said town*
 “ *for the two years from the Whitsunday 1712 to Whitsunday*
 “ 1714, conform to an obligation granted by them of this date
 “ for that effect, upon their being allowed to exact the imposition
 “ under written, with the consent and agreement given thereto
 “ by the Dean and Faculty of Advocates, and the Writers to the
 “ Signet:—Therefore the said Lords, according to the authority
 “ given them by the said law, do, by the tenor of this act, im-
 “ pose a yearly tax of 2 *per cent.*, for the space of two years, upon
 “ all the Members of the College of Justice, effeiring to their
 “ house-rents within the Good Town of Edinburgh, as they stand
 “ valued in the stent-books of the said burgh, for the said two
 “ years from Whitsunday 1712 to Whitsunday 1714, &c.; and
 “ ordain the said Magistrates, and their successors in office, to put
 “ this present act to all due execution according to law. And, for
 “ that effect, the Lords grant warrant to the Collector of the Town’s
 “ annuity, to ingather and exact the said 2 *per cent.* in the like way
 “ and manner, and by the same legal methods, as the Town’s an-
 “ nuity is by them exacted.”

The understanding of all concerned upon this head, is far-
 ther ascertained by the following *bond* granted by the town of E-
 dinburgh upon this occasion: “ We Sir Robert Blackwood of Pit-
 “ reavie, Lord Provost, &c. Forasmuch as the Lords of Coun-
 “ cil and Session, by their act of this date, have imposed a tax, &c.
 “ in consideration of our having maintained the begging poor
 “ within the said Town from Whitsunday 1712, and granting
 “ these presents; Therefore, we, by the tenor hereof, for our-
 “ selves, and in name foresaid, bind and oblige us, that all the
 “ streets, &c. shall be kept free from clamorous and begging poor,
 “ and

Council records.

“ and they maintained in suitable places appointed within the
 “ Town for that end, from the date hereof, to the term of Whit-
 “ sunday next 1714 ; and in case any poor be begging in the said
 “ street, &c. that upon notice thereof given to the commanding
 “ officer at the Court of Guard for the time, the said poor shall be
 “ immediately removed, and carried away to the respective places
 “ appointed for their maintenance, in manner foresaid.”

In this shape, the Lords and the Magistrates executed a contract.—In respect that the latter *had maintained*, and were willing to maintain, the proportion of the Poor which fell to the share of the College of Justice for a specific time, therefore a tax is given to indemnify the City *for the same space*.—This tax was continued, according to information, for a number of years ; but proper evidence of the particular mode or footing, has not yet been found.

In the 1731 new regulations became necessary, relating to Beggars, and to the Poor.—A new contract was executed between the City, with consent of the Lords, of the one part, and the Justices of Peace of the county, on the other.

Feb. 18. 1732.

But, in order to carry the purposes of it into execution, the Magistrates applied to the Court for a renewal of the assessment of 2 *per cent.* upon the houses occupied by the members of the College of Justice.—This was remitted to a committee of the Advocates and Writers, who reported, “ That they were humbly of
 “ opinion, that it is the privilege of the Faculty to be free of all
 “ personal taxations imposed for the use of the town of Edinburgh ;
 “ and that the general words of *inhabitants and burghesses*, even
 “ in acts of Parliament in relation to these taxations, have never
 “ been construed to extend to the members of the College of Ju-
 “ stice, who are looked upon to be only residents for the service
 “ of the lieges during the sittings of the courts ;—and do apprehend that your Lordships have always put the same construction
 “ on these laws,—particularly upon the 12th act of Parliament,
 “ Session

Session 2d, James VIIth, as appears by your Lordships *act of Sederunt*, hereafter more to be noticed, which was made immediately after that act of Parliament; and they apprehend that the allowing the Magistrates to impose such taxation by their authority, might open a door to the burdening the members of the College of Justice *with the Town's Annuity*, which they conceive they are not liable to: Nevertheless the Dean and Faculty of Advocates are willing to contribute their assistance towards so good a work as the maintenance of the poor, and do not decline to submit to such a reasonable taxation as your Lordships shall judge necessary, &c. And as to the method of imposing, they submit to their Lordships consideration, the act of Sederunt 29th January 1687, as a proper plan, by which your Lordships did empower the Magistrates to impose the taxation therein mentioned, upon the inhabitants and burghesses; but then you did not understand the members of the College of Justice to be comprehended under these words: And therefore, by the posterior part of the act, the Lords of Session, for themselves, and other members of the College of Justice, submitted, by voluntary offer, to be liable to their proportion of that taxation, with an express salvo, that that offer should nowise prejudice the members of the College of Justice, as to their privilege of being free from all stents and impositions to be imposed upon the town of Edinburgh."

An act of sederunt was accordingly made, imposing two *per cent.* upon the members of the College of Justice, for the maintenance of the Poor, for the space of three years, commencing Whitsunday 1731.

This act proceeds upon the recital of the statute of James VII., the act of sederunt 1687, and the articles of agreement between the Town and the County; to all which, a *salvo* of the privileges is annexed, in terms of the report of the Faculty.

All former endeavours to provide for the Poor, or to remedy the evils arising from their situation, had been attended with no

more than temporary effects.—The inhabitants of Edinburgh were found to be greatly increased; and the number of Poor, *entitled to be supported*, were also found to be multiplied in a greater proportion.—It became then indispensibly necessary, to establish a certain and constant provision for this purpose, and to collect the objects of public charity into one place, so as they might be subjected to a regular government, under the eye of the Public.

In the 1742, the Charity Workhouse was erected by a contribution of the whole societies, bodies-corporate, and well disposed individuals of all denominations.

The Funds appropriated to the Support of the House, were,

1. The Two *per Cent.* upon the Houses of the Inhabitants.
2. The Collections at the places of Public Worship.
3. The Profits of the Assemblies.
4. Charitable Benefactions.

And, *lastly*,

The Labour of the Poor in the House.

The members of the College of Justice, both in an individual and corporate capacity, liberally contributed to this public work, which was erected in dependence upon the continuation of the support of that opulent Body; and therefore it was, that a share of the government of the House, was vested in the College of Justice, equal to that of the Magistrates and Town Council.—The former have the nomination of 18 Governors, and the latter of an equal number, viz.

Lords of Session	-	3
Barons of Exchequer	-	1
Faculty of Advocates	- -	6
Writers to the Signet	-	6

It must strike all concerned with just surprise, when they reflect, that, ever since the erection of this House, the College of Justice have never been taxed, nor have taxed themselves, for the support of the Poor.—Had the funds originally destinated, proved sufficient for the purpose, this circumstance might have been accounted for: But, every person knows, that the funds have fallen short again and again; and that, of late, they have decreased in such an alarming manner, as to threaten the dissolution of the House.

This is not the place for a detail of that matter.—The frequent representations of the Governors of the Charity, must have rendered the particulars abundantly familiar.—They have often been reduced to the miserable necessity of turning out numbers of their Poor upon the Public, in the hardest times.—A large and growing debt has been unavoidably contracted; and even the dissolution has only hitherto been postponed, by repeated contributions from the Public.

Upon these occasions, it is to be gratefully acknowledged, that many members of the College of Justice have borne their part with abundant liberality.

The consequence has been, and always will be, that the *whole burden* has been thrown upon the good and charitable, while the selfish and unfeeling have been suffered to escape.—There are many Members who may reflect with internal satisfaction, that the sum of their contributions have amounted to a great deal more than the legal tax.—At the same time, they must regret, that many others have been allowed to retain every shilling of the money the laws of the country had appropriated for the maintenance of their unfortunate and indigent fellow-creatures.

It was, without doubt, a very great omission in the City of Edinburgh, at the erection of the Charity Workhouse, not to insist upon the whole members of the College of Justice being taxed in the same manner as the rest of the inhabitants.—They were about

about to establish a *permanent mode* for the support of the Poor; and therefore they were entitled to have the funds of support rendered equally *permanent*.—From this, it seems the Magistrates were diverted at the time, by the zeal of many worthy individuals of the profession of the Law, whose assistance perhaps was immediately necessary to the scheme: But, after the erection had been completed, and upon the very first appearance of deficiency of the funds, it was a duty which the City of Edinburgh owed to to themselves, and to society, to have this matter put upon a proper, durable, and legal footing.—From the transaction between the College of Justice and the City, in the 1713, the particulars of which are before set down, it appears, that the College of Justice taxed themselves at the same rate with the other inhabitants, for the space of *two years*.—Why?—Because, says the act of sederunt, “the Magistrates have already maintained, and “and have further undertaken to maintain, the Poor of the said “City for two years.”

The same thing has now been performed for 40 years, that is, *ever since the Erection of the Charity Workhouse*; and therefore the question may be fairly put, What sum do the College of Justice now owe to society upon this account?—The liberality of the individuals of that Body has been acknowledged under all necessities; but, had the legal tax, which the *whole Members* ought to have paid, been collected, these necessities would not have existed, and the establishment, at this moment, must have been upon a firm and lasting basis.

From the foregoing deduction, it may be fairly concluded, that an exemption from the support of the Poor of the City of Edinburgh, *does not, nor ever did make one of the privileges of the College of Justice*.—In a moral sense, it is needless to observe, that the idea is inadmissible; and, in a legal sense, such a claim must appear not only to be void of foundation, but that the general obligation stands enforced by the whole weight of the laws.

The statutes regarding the Poor in Scotland, extend to all the subjects of the realm, without exception; and these laws have, by judgments of the Court of Session, been found, in various instances, to remain in full force.—If the College of Justice can claim an exemption, that claim ought to defend them from payment in every part of the kingdom.—But it will not be said that such an immunity exists.

The acts of James VI. and Charles II. continue to be executed.—Not to go far off, they are, at this moment, in full observance within the City; for it is not in consequence of the act 1686, but in virtue of the *General Poors Laws*, that the two *per cent.* has all along been raised upon the inhabitants of Edinburgh.—The same statutes continue to be executed *in terminis* in the parish of St. Cuthberts, which surrounds the Royalty of Edinburgh.—Many members of the College of Justice are heritors of St. Cuthberts, and, as such, are regularly assessed for the support of the Poor with their neighbours.

It must be therefore some *special ground* upon which the members of the Law can be free from the common obligation within the City of Edinburgh.—But there is not a shadow, for support of such an immunity, to be found in the records or history either of the Town or Court.

The Defences, if they deserve that name, pled in the 1710, have been stated;—and it is not probable they will be repeated in the 1785.

The sole foundation of this most unreasonable distinction, seems to be no other than this,—That the Lords of Session, in the act of imposing a tax upon the College of Justice, in obedience to the statute 1686, inserted a *salvo* of their privilege of being free of all stents and burdens within the town of Edinburgh, which was re-echoed by the report of the Faculty, in taxing themselves again in the year 1731.

It is needless to observe, that the right which the City Poor have to the contribution of the College of Justice, cannot be weakened by a reservation of privileges which had no existence; and therefore, as the point remains *open* and *entire*, it now behoves the members of the Supreme Court to establish this extraordinary right of exemption; and, according to the rules of law, to show cause why their share of a moral, universal, indispensable duty, should be performed by the other citizens and inhabitants of Edinburgh.—It is the interest of the City to rectify the error already committed, by refusing to receive, as a voluntary offer from the College of Justice, what was incumbent upon them by all laws, divine and human.—To that mistake is to be imputed the train of hardships the Charity Workhouse of Edinburgh has laboured under these thirty years past, and which continues to create so much uneasiness to the Public.

ANNUITY for Payment of MINISTERS STIPENDS.

AT the institution of the College of Justice, the Church was abundantly provided; and therefore, it need scarcely be noticed, that *the exemption from watching and warding, and other offices, within burgh*, had not any relation to the support of the Ministers of a Religion which, at that time, was not acknowledged, far less established.—Queen Mary, in the division of the patrimony of the Old Church, destined a share of it to the Town of Edinburgh, by a charter, dated in the 1566.—By this charter, the lands formerly belonging to the Black and Grayfriars, together with the rents payable to several other private churches and chapels in the Town of Edinburgh, and its neighbourhood, were granted to the community, towards

towards creating a fund for the support of the Clergy of the new establishment.

Edinburgh was first divided into quarters, and these quarters into parishes, anno 1588.—For some time, no Minister had a particular charge of a congregation under his own care; and to this irregularity the frequent misbehaviour of the Town Clergymen seems to have been attributed by James VI. and his Council. His Majesty therefore insisted that a new plan should be adopted;—that the people should be divided into separate congregations, and a Minister appointed to each of them.—Regulations for this purpose were made out, transmitted to the Town Council of Edinburgh, and an order issued, requiring the City to put them in execution. The third article of these rules, is in the following terms:—
 “These Ministers must be provyded of houses to reside in within
 “their severall parochins, which shall be known to be the house of
 “the church, and with maintenance sufficient, which in that town
 “can be no less then 2000 merks Scotts to everie Minister, and
 “ought to be payd in all reason by the people that live under
 “their care.—This may be doone either by imposing a *certain annuity upon everie house and tenement within the parochins, as is*
 “*doone here at London*, and in weill ordered cities, or by some other convenient means that may be devised; and, till this take
 “effect, the Town must bear the charge of the whole.”

Maitland,
P. 275.

In the 1597, the Town Council, by an act, divided the Town into *eight* parishes, and required the College of Justice to make payment of 1000 merks annually, as their quota of an additional stipend proposed to be given to the Clergy*.—The business, however,

* The words of the act are—“Ordained, that the Town be divided into aucht Parishes, and the Town, with the College of Justice, to sustain aucht Ministers; with provision, in case the said College of Justice faille in payment of 1000 merks for their part of the said Ministers stipends, in that case the same to be deducit fra the
 “haill aucht Ministers stipends *pro rata* yearlie.”—15th June 1597.

ever, from various interruptions, was not effected during the lifetime of James.—It became one of the first objects to which his son Charles paid attention.—He ordered a copy of his father's articles to be delivered to the Town by the Privy Council; and, at the same time, sent the Magistrates a letter, enjoining them to carry the business into execution.—The articles were soon returned, with special answers to each.—To the article before engrossed, the Magistrates returned, "That the ministers of this burgh are provided each man with a sufficient house to dwell in, *maill* (rent) free, with a yearly stipend of 1200 merks Scots, thankfully paid to them, conform to an agreement maid with them at their entry to their charges. And since the common-guid is not abill to sustein the burthen alreddie imposed thereon, and of *reason* *aucht not to be thralled to the payment of Ministers stipends*, and that the augmentation desired, both in matter and manner, does crave mature advysemēt, they most humbly entreat his Majesty to pardon them that they cannot give answer to the same at this present, and to share the same, till the rest of the articles be first discussed, and the distribution desired, in manner contained in these articles, and answers under the same, annexed, be first satled and brocht to perfection." *201.*

The answers or resolutions of the Council thus made, were confirmed by an act of their own in September 1625, in consequence of which two ministers were appointed to each of the four parishes; and it was resolved, "That each of them should be paid of yearly stipend 1200 merks Scots; and how soon the distribution intended should be perfected by the best means they can find, and with all possible diligence, they should agree on such an obligation as may be fitted for a sufficient maintenance to each of them."

The Magistrates, however, soon found their ordinary funds fall short even of the payment of this 1200 merks, and therefore were

were obliged to have recourse to the assessment or annuity as paid in London, originally proposed by King James.—They applied to his Majesty, who gave instructions for bringing the matter before Parliament.

In obedience, the affair was brought forward in the year 1633.—The Parliament, in place of deciding the matter themselves, granted a special commission of reference to the Privy Council, containing full powers to determine it, and declaring that the act to be made thereon should have the *whole force and strength of a statute of the Three Estates*.

Unprinted acts,
No. 12.—1633.

The College of Justice is said to have appeared by the President, and *claimed an exemption*; but it was refused.—His Lordship contented himself with making some amendments upon the act, after which it was solemnly passed.

The Lords of the Council thereby statuted and ordained, “ That the sum of 12000 merks should be uplifted yearly of the whole inhabitants and indwellers within the said burgh, *excepting the Lords of his Majesty’s Privy Council, and the Lords of Session*, and that according to the quantity and proportion of mails they pay, or the houses where they reside may pay: That a roll and valuation is to be made up ilk two years, and that, according to the said valuation and distribution of the said town, declare the whole inhabitants to be subject to contribute for the Ministry: And in case of any person’s refusal, the Council is ordained to direct their officers to poind their goods, or ward their persons for the same.”—The act farther declares, “ That the inhabitants were, and only should be, such persons who took houses for a year, or half a year, within the said burgh, or remain therein with their families the most part of the year or half year; and that these persons, and no other, should be comprehended under the general name of inhabitants.—And the Lords ordained *the act to have the force,*

March 12. 1644

*" strength and effect of a statute of Parliament, conform to the reference
" of Parliament for that purpose."*

In the 1636, a signature was passed, and subscribed by the King and the Lords of Exchequer, ordaining a charter to be made under the great seal, *" ratifying, approving, and perpetually confirming said act *, in the baill heads, articles and clauses thereof."*—This signature is dated at Whitehall, the 19th of January 1636.

In July, another signature was subscribed by the King, and Lords of Exchequer, reciting the whole procedure, and ordaining a letter to be expedite under the great seal, *" ratifying, confirming, and approving the allowance and approbation made and given by the Lords of Privy Council in the foresaid act, with the exception therein specified, and all that did proceed and follow thereupon."*—This signature is also dated at St. James's, the 13th of May 1637.

April 5. 1637.

The Magistrates having demanded the Annuity, in terms of the act of Privy Council, difficulties and objections were thrown in their way by the College of Justice; upon which, of this date, the Magistrates passed an act of Council, bearing, *" That the Town-Council having dealt, by all means possible, in a fair and peaceable way, to have drawn the members of the College of Justice to have made payment of the sums of money yearly to have been collected of the inhabitants of Edinburgh, for the Ministers stipends, wherein they could effectuate nothing; Therefore, the Council ordains the Provost and Baillies to take all such courses, whereby the members of the College of Justice may give obedience to the act of Secret Council made thereanent; and what courses they shall take, the Council allows and approves of."*

The

* It appears, that the original draught of this act had been presented to Parliament by the Magistrates of Edinburgh.

The College of Justice, and other members of the law claiming under them, judged it most expedient to anticipate the effect of all these acts of Parliament, Privy Council, Royal grants, and resolutions of the Magistrates of Edinburgh, by a *voluntary offer*; and for that purpose, the following act of sederunt was made:

July 6th, 1637 †.

“ The whilk day, in presence of the Lords of Council and
 “ Session, appeared personally, the Advocates, Clerks, and Writers
 “ to the Signet, Privy Seal and Great Seal, and remnant members
 “ of the College of Justice, and there judicially expounded and de-
 “ clared, That notwithstanding the immunity and exception made
 “ in their favour, the act made by the Lords of Privy Council, of
 “ date the 18th March 1634, upon a reference made to them by
 “ act of Parliament *anno* 1633, anent the uplifting of an yearly
 “ duty of 12,000 merks money of this realm, from the inhabitants
 “ and indwellers within the said burgh of Edinburgh, according
 “ to the quantity and proportion of the mail which they pay, or
 “ the houses where they reside may pay, for helping to pay the
 “ Ministers stipends of the said burgh, as the said act of Council,
 “ *wherein the Advocates, Clerks, Writers, and remnant members of*
 “ *the College of Justice foresaid are excepted*, of the date foresaid, at
 “ length bears: Yet the saids Advocates, &c. for themselves, and
 “ their successors in the said places and offices, to testify *their godly*
 “ *disposition* to the furtherance of God’s service, under the spe-
 “ cial provision and condition after specified, judicially offered,
 “ and be these presents, *does offer* to pay yearly, during their resi-
 “ dence within the said burgh, not excluding, but comprehending
 “ herein all vacance and feriat times, to the community of the
 “ said burgh and their collectors, and that allenarly to the behoof
 “ of

† This act is not printed.

“ of the saids Ministers serving the cure at the kirks within the said
 “ burgh, All and Haill the sum of eleven pennies money of this
 “ realm, furth of ilk twenty shillings of mail whilk shall be paid
 “ by the saids members of the College of Justice, for their *houses*,
 “ *chambers* and *booths*, occupied and possessed by them, or other-
 “ wise, according to the same proportion effeirand to the stent of
 “ the houses, chambers or booths, possessed by them, by heritage,
 “ liferent, or otherways, and that yearly and termly, at two terms
 “ in the year, Whitsunday and Martinmas, be equal portions, be-
 “ ginning at Whitsunday last bygane, and sa furth yearly and
 “ termly, sa lang as the session shall not be commanded by au-
 “ thority to sit at any other place or burgh outwith the said town
 “ of Edinburgh; and are content, and consent, that an act be made
 “ thereupon in the books of Council and Session, binding the saids
 “ Advocates, Clerks, Writers, and remnant members of the said
 “ College of Justice, and their successors in the said offices, and
 “ that letters of horning, upon an simple charge of six days
 “ warning, be direct hereupon, and, in case of disobedience,
 “ poynding or warding; of the which charges, the Lords declares
 “ they will grant no suspension, except the same be passed and
 “ granted in their haill presence; under special reservation, provi-
 “ sion and consideration, made by the saids Advocates, and others
 “ foresaid, that the said voluntar offer shall noways *be prejudi-*
 “ *cial to them, of their privileges, liberties, and immunities what-*
 “ *soever*; whilk offer, with the said provision, the Magistrates
 “ compearand personally, accepted in behalf of the Council
 “ and Community.—To the whilk voluntar offer and accepta-
 “ tion above-written, the saids Lords of Council and Session
 “ has interponed, and interpones their decret and authority;
 “ and *statutes and declares, That hereafter, none shall be admitted, re-*
 “ *puted, nor balden members of the College of Justice, to enjoy any be-*
 “ *nefit*

“ *nefit or privilege thereby, aut eo nomine, but fuch as fhall ratify and*
 “ *approve this prefent act, and give ready obedience thereto; and or-*
 “ *dains thir presents to be insert in their books of federunt, for an*
 “ *act to bind and oblige all the members of the College of Juftice*
 “ *foresaid, for obedience and obfervance of the premifes.*”

Thus, at an early period, the College of Juftice fet an example to their fucceffors, of that policy, which is now the foundation of the exemptions, raifed by time into privileges.—So foon as they found themfelves fubjected by law, and the Magiftrates determined upon the execution of the law, they endeavoured to ward off the blow by a *voluntary offer*.

It cannot be fupposed, that the members of the Court, in this cafe, had provided themfelves with an *extract* of the ordinance of Privy Council, becaufe they never would have knowingly injured an act of Court by an *erroneous recital*; but fo it is, that, by fome miftake or other, they were impreffed with an idea, that they, the Advocates, Clerks, Writers, and whole remanent members of Court, had been exempted by the act of Privy Council; whereas the immunity extended to nobody but to the perfons of the *Lords of Privy Council and to the Senators of the College of Juftice*.

The commotions of the kingdom, which foon after fucceeded, put an end for fome time to all civil bufinefs; but, even in the midft of thefe, the tax for the fupport of the Clergy, by the whole inhabitants of Edinburgh, *the College of Juftice included*, was fubmitted to and paid.—Nay, fo much did the labours of the Clergy come at that time into request, that the ordinary number of Minifters proved unable to fatisfy the calls of the people; and therefore it became neceffary to provide *twelve Minifters* to the 8 parifhes in the City, and to raife an annual fum of 19,000 merks for their fubfiftence.

Mar. 2. 1649

To bring about this new establishment, the Magistrates applied by petition to the Committee of Estates, for authority to lay an *additional imposition* upon the *house mails*, in order to make good the sum wanted.—The Committee of Estates passed an act for the purpose ; and the matter being brought before Parliament, they ratified the act of Council of the Good Town, together with that of the Committee of Estates, for the yearly imposition of 19,000 merks upon the mails of the houses of the said burgh.—The act then proceeds in these words : “ And the Estates of Parliament
 “ considering that the providing and maintaining of the said six
 “ Ministers, doth concern the worship of God, and tends to the
 “ propagating and maintaining thereof in the chief city of this
 “ kingdom, from which none that are partakers of so great a bene-
 “ fit, will in conscience withdraw or exeem themselves, *with-*
 “ *out great guiltiness before God* : Therefore, the said Estates of Par-
 “ liament do hereby statute and ordain, That the yearly stipend of six
 “ Ministers be imposed and laid upon the whole rents and mails of
 “ all the dwelling-houses, chambers, booths, cellars, and all other
 “ houses high and low, paying mail within the said town : Which
 “ imposition shall be paid by the inhabitants and possessors, and
 “ that *without any exemption or exception of any house of whatsoever*
 “ *holding or nature they be of, or of any person or persons, of whatsom-*
 “ *ever degree, quality, or place they be of, upon any privilege or pre-*
 “ *tence whatsoever*. And because it is not intended, that any
 “ prejudice or preparative should be hereupon inferred to *the pri-*
 “ *vileges and liberties of the College of Justice*, or that any member
 “ thereof should be *unequally burdened* ; Therefore, for preserv-
 “ ing the Lords of Secret Council and Session, and the haill mem-
 “ bers of the said College of Justice, free from *any prejudice to them-*
 “ *selves or their privileges*, it is ordained, That the said immunity
 “ or

“ or imposition shall be laid upon all the inhabitants, tenants, and
 “ possessors of the houses, chambers, booths, and others aforesaid,
 “ within the said burgh, after exact survey by four sworn men in
 “ every paroch, who shall survey and value the house-mails afore-
 “ said, whereof *three* shall be citizens, to be chosen and sworn by
 “ the Town Council, and the *four* shall be nominated, chosen, and
 “ sworn by the *College of Justice*, or such as they shall appoint.”

This assessment, upon trial, being found to be still inadequate,
 another petition was given into Parliament, and another statute
 passed of consequence.—This last act ratifies the whole preceding
 acts and statutes; and farther mentions, “ That it having now
 “ been found, by the value of the whole house-mails truly and
 “ faithfully taken up be diverse surveys of sworn men, and now
 “ last by an exact survey of the Elders and Deacons of the Ses-
 “ sions, *with the advice of the Dean of Faculty and other mem-*
 “ *bers of the College of Justice*, that the Annuity of five on the
 “ 100 will not make up this said sum of 19,000 merks, do judge
 “ it necessary, towards the maintenance of six Ministers, that the
 “ quota of the said annuity be augmented *one* merk upon every
 “ 100; and therefore, do hereby decern and ordain, that *an annu-*
 “ *ity of six merks* be imposed upon every 100 merks of the whole
 “ mails and rents of all the houses, chambers, booths, cellars, and
 “ other houses high and low, with the pertinents within the said
 “ burgh.”

June 19. 1649.

Proclamations were immediately made through the town, that
 all without exception should pay the Annuity, under the pains
 contained in the acts;—and universal submission was accordingly
 given to them.

All claims or ideas of distinction between the College of Justice
 and the other citizens in this article, being thus removed by the Su-
 preme

preme Authority of the nation, they thought themselves entitled to make several demands upon the Town; and, for that purpose, a Committee of the Court met with the Magistrates in 1649. The demands of the College of Justice were, *inter alia*—"That they should be properly attended by the Ministers of the City—That the table-cloths, as well in the Parliament House as in the Church, should be removed—That a velvet cushion, black or red, with a cloth of the same, be provided to ly in the kirk, before the President of Session."—And all their requests were granted *in terminis*."

Books of Sec.
Nov. 2. 1649,
not printed.

The statutes before recited, with others of the Parliaments termed *Rebellious*, fell under the general act rescissory passed after the Restoration of Charles II.—So soon, however, as the violence of the Royal Party abated, the wisdom, equity, and good effects of many of the rescinded statutes, procured them the honour of being re-enacted, under the immediate authority of the Monarch.

Amongst others, the acts above recited were revived, and again raised to the full force and dignity of law, in the very first session of the Restoration Parliament 1661.

The act bears, "That his Majesty, and his Estates of Parliament, considering that it was just and necessary that the stipend of the Ministers of Edinburgh should be authorized by a perpetual law; Therefore, his Majesty, with consent of the Estates of Parliament, has statuted and ordained, That the yearly stipends of the ministers of the said burgh should be imposed upon, and paid by the inhabitants, tenants, and indwellers of the said chambers, booths, cellars, and all other houses, high and laigh, in the said Town, without exception or exemption of any house, of whatsoever holding or nature the same be of, or of any person or persons, of whatsoever degree, quality, or place, upon pre-
tence

" tence of any privilege or pretext whatsoever; and that the quota of
 " the said annuity, payable by the said inhabitants of the houses,
 " should be according and effeiring to the mails of the houses oc-
 " cupied and inhabited by them, at the proportion of six merks
 " of each hundred merks of mail: And because it was not in-
 " tended that the College of Justice should suffer, or be prejudiced
 " in their liberties, it is declared, That the said annuity and impo-
 " sitions for the Ministers stipends, being a cause so necessary and
 " pious, should not prejudice, nor be derogatory to the liberties and
 " privileges of the College of Justice: And it is farther ordained,
 " that the imposition shall be laid upon the inhabitants by a sur-
 " veying roll, according as therein directed; and in case the College
 " of Justice refuse or delay, being required by the Magistrates of Edin-
 " burgh as follows, viz. the President of the Session, and Dean of
 " Faculty, to be required, in time of session, in six days, and in
 " time of vacation in twenty days,—in that case, the Magistrates
 " and Council have power, after the expiration of the time, to no-
 " minate any other persons of the College of Justice to be Commis-
 " sioners to make the survey upon them: And in order to deter-
 " mine all disputes between the City and the College of Justice, re-
 " specting the premises, a Committee is named, composed of the
 " Members, and of the Magistrates of Edinburgh, to whom the
 " President of the session, and the Provost of Edinburgh for the
 " time, are to be supernumerary, for determining all such que-
 " stions.—Lastly, His Majesty, and his Estates of Parliament, ratify
 " and approve the possession and use of payment of the said Annuity and
 " imposition, since the same has been in use to be paid; and or-
 " dain all persons who were resting and had made payment of
 " their quota of the said Annuity, to make payment of the same
 " of all years and terms bygone; and the Magistrates of the City
 " are appointed to see the whole act and ordinance obeyed and

“ put to execution, according to the tenor thereof, and to do all
 “ things necessary for that effect; and letters of horning, and all
 “ other executorials necessary, are ordained to be directed on the
 “ same, in form as effairs *.”

In virtue, then, of no less than *three several acts of Parliament*, an act of Privy Council, and an act of sederunt, or agreement of the College of Justice itself, the City of Edinburgh continued their possession of a tax, in itself just, equitable, and expedient, down to the 1678, *i. e.* for 17 years.—At this time, a bill of suspension was presented by one set of lawyers, in order to *suspend* or *stop* the said possession, and an action instituted by another party, for *declaring* or *ascertaining* a variety of exemptions and immunities which the College of Justice claimed against the Town, as the right and privilege of all its members.

The suspension sets forth, “ That the haill members of the
 “ College of Justice were distressed at the instance of the Pro-
 “ vost, &c. for payment of a penny in the pound for the whole
 “ house-mails within the said burgh of Edinburgh, called the
 “ Reik-Penny or Annuity; and that the Provost, Baillies, and
 “ their collector, have divers times sent common soldiers, who
 “ unwarrantably have come to the said members of the Col-
 “ lege of Justice their private houses and dwellings, and, without
 “ inventar of the goods, carried stoups, plaits, candlesticks, and
 “ such like plenishing, under the notion of poinding the same for
 “ Annuity, and thereby has rifled and plundered their dwelling-
 “ houses, affronting their wives and servants, and as yet detains the
 “ same.”

The libel or declaration in the action, recites the letter of protec-
 tion

* In consequence of the long and peaceable submission of the College of Justice to the Annuity, not only a seat in the Cathedral Church had been provided to the Judges in a body, but seats were also given to each of their families; and the practice has ever since been continued.

tion of James V., terming it an act of Parliament, with all the ratifications and falvos of privileges which have already been stated; and farther states, " That Charles I. having, in the year " 1633, granted commission to the Privy Council for laying upon " the inhabitants of Edinburgh the sum of 12,000 merks yearly " for payment of the Ministers stipends,—the Privy Council, by " their act, March 1634, did *expressly liberate* the members of " the College of Justice from any burden or payment thereof; the " 23d act of his then present Majesty Charles II., ratifying all " former privileges and statutes, and extending the benefit of " them to the other members of Court.—As also, that by the " laws of all kingdoms and nations, all judges, lawyers, and " members of civil judicatories, are exeemed from all taxes, im- " positions, and other public burdens, and are endued with great " privileges, for the better encouragement of their offices and em- " ployments.—Notwithstanding whereof the Magistrates of Edin- " burgh have, of late, encroached upon the said privileges, and " have taken upon them to impose and exact from the said " Members six of the hundred of the house mails, upon pretext " of maintenance of their Ministers."—The summons therefore concludes " to have it found and declared, That the members of " the College of Justice are, by the privileges and immunities " granted to them by the acts of Parliament, Privy Council, and " of federunt, and privileges of all nations granted to judges " and lawyers, free from all impositions imposed or to be impos- " ed by the Magistrates of the said town of Edinburgh, upon " them for the maintenance of the said Ministers, and particular- " ly of the Annuity foresaid."

The counsel for the College of Justice were, Sir George Lockhart, Sir John Sinclair, Sir John Dalrymple, and many others.—The production upon their part, consisted of a copy of a bill, said

said to be given in by the Advocates, Clerks, and Writers to the Signet, reclaiming against the act of federunt 1637, and also of several acts of the Town Council of Edinburgh, respecting the Annuity of their Ministers; particularly an act, dated in July 1643, bearing, that the Town Council accepted of a voluntary offer of the College of Justice to pay Ministers stipend for six years thereafter.

The City of Edinburgh appeared by Sir George M'Kenzie of Rosehaugh, and Sir Andrew Lauther of Fountainhall, who produced the acts of Privy Council, of Parliament, and of Sederunt, before recited; and insisted that the members of the College of Justice had been in use of payment of said Annuity, in consequence of said ~~Annuity~~, till of late.

Acts The College of Justice repeated all the acts and ratifications before recited, which, they said, excoemed them from the Annuity.—
 “ And as to the voluntary concession *in anno* 1637, no regard
 “ ought to be had thereto, because they did not *subscribe* the
 “ same, and it was not plenarie of all the members, but only of some
 “ desirous to gratify those then in power; and that concession and
 “ act of federunt was done in the beginning of the troubles, and
 “ close of the session 1637, and the same cannot bind their succes-
 “ sors, especially, as soon as matters came to be settled, the most
 “ eminent Advocates, by a petition to the Lords, disclaim any
 “ such consent given in the year 1637; and, to prevent any act
 “ of the Lords thereupon, the Town Council of Edinburgh passed
 “ an act restricting the Annuity to seven years only,—which the
 “ Lords of Session did approve, by an act of federunt. And in the
 “ year 1649, Sir James Stewart, then Provost, being then to apply to
 “ the Parliament that an act might be passed for the said Annuity,
 “ and finding that the foresaid act of the Town Council stood in
 “ the way, they rescinded their own act, the copies of which pe-
 “ titions and acts are produced; and they craved the chargers
 “ might

" might exhibit the records of the Town Council, and give their
 " oaths if they have vitiate or cancelled any of these acts. And,
 " that the foresaid concession was only *personal*, and could not
 " bind their successors, it appeared by the act of federunt, which
 " appoints, That none should thereafter be admitted Advocates,
 " until they gave their consent thereto. And as to the act of Par-
 " liament 1649, giving the town right to Annuity, that Parlia-
 " ment, and the whole acts thereof, are rescinded, and the act re-
 " scissory contains no *salvo* as to any acts passed therein. And as
 " to the act of Parliament 1661, the same being only a *private*
 " *act*, whereunto the members of the College of Justice were *not*
 " *called*, it cannot derogate from their privileges, settled by pub-
 " lic acts of Parliament, whereof the act is in that same Parlia-
 " ment which communicates the privileges of the Senators to the
 " Advocates and remanent members of the College of Justice, and
 " proceeds upon such a narrative, viz. That the administration of
 " justice is of universal concernment, and that the members of the
 " College of Justice may be encouraged to serve in their stations,
 " and undergo the toil they are put to therein : And that act in
 " favour of the chargers being but a private act, it is to be under-
 " stood *salvo jure* ; it being declared by the act *salvo*, in anno 1633,
 " That private acts or ratifications passed in Parliament, shall not
 " prejudice the private parties rights acquired before the making
 " of these acts ; and the act *salvo*, in anno 1661, is in the same
 " terms : And where the Parliament does intend that a private act
 " should not fall under the act *salvo*, then it is expressly excepted,
 " as appears from the act *salvo*, 1663 years, which contains an ex-
 " ception of the act passed in that session of the Parliament in fa-
 " vour of the Duke and Duchess of Ballcleugh : And the benefit
 " which the town of Edinburgh had of the rents of the Bishop-
 " ric and Deanrie of Edinburgh during the late troubles, with

“ the other mortifications they have gotten, with the rents of the
 “ seats, might have done much more than satisfy the 12,000
 “ merks *per annum*, which was all they desired from the Parlia-
 “ ment: And the Town deals unkindly in this affair with the
 “ College of Justice, whose residence here has brought them to all
 “ that greatness and splendor they are in; and the members of
 “ the College of Justice their proportion of the Annuity not ex-
 “ ceeding 5 or 600 merks be year.”

“ Whereunto it was replied by Sir George M’Kenzie, then his
 “ Majesty’s Advocate, and Sir John Lauder advocate, as procura-
 “ tors for the Good Town of Edinburgh, *1mo*, The Ministers of
 “ Edinburgh, as to the right thereof, are founded *in jure communi*,
 “ whereby all heritors ought, without exemption, to pay stipend to
 “ the Ministers whom they hear, according to that passage of
 “ Scripture, *If we partake of their spiritual things, they ought also to*
 “ *partake of our temporal things.* *2do*, The Ministers of Edinburgh
 “ are *decennales et triennales possessores*, which exclude all exemp-
 “ tion or exception; and they, seeing their predecessors the
 “ former Ministers of Edinburgh in possession of their annu-
 “ ities, and having thereupon accepted calls to the Ministry in this
 “ place, they were not obliged to consider quirks of law, nor *docere*
 “ *de titulo*, the foresaid possession being sufficient, unless the de-
 “ fenders can instruct a better right. *3tio*, Not only are they
 “ founded *in jure communi*, as to this point, but upon the suspend-
 “ ders own concession, and an act of sederunt thereupon, under
 “ the hand of the Clerk of the College of Justice. *4to*, Their
 “ right is founded upon an express act of Parliament *in anno*
 “ *1661*, which *did not pass of course, as ratifications do, but was done*
 “ *deliberately, being first advised by the late President of the Session,*
 “ *and amendments thereof made by him, who would have been loth*
 “ *to have wronged the privileges of the College of Justice,*
 “ being

" being present, and not *reclaiming then nor since, by any*
 " *addresses to the Parliament*, albeit several Parliaments have oc-
 " curred: In respect whereof, and of the *chargers constant*
 " *possession of the Annuity*, which is the strongest homologati-
 " on, their right cannot now be *brought in question before the*
 " *Lords of Session*. And as to what is objected against the act of
 " federunt, that the concession was not plenary of all the mem-
 " bers, it is answered, That they opposed the act, which bears, that
 " all the Advocates, Clerks, and Writers to the Signet, did com-
 " pear and consent. And whereas it is pretended, that their con-
 " sent, *not being subscribed, is not obligator*, it is answered, That
 " there was a judicial act, which being done for so important a
 " cause as the act bears, viz. the glory of God, and the mainten-
 " ance of the Ministers of whom they are ordinary hearers; and
 " it being an act of society, wherein it is scarce possible, and not
 " ordinary, to get all their subscriptions; and being subscribed by
 " the clerk of the Society, it is sufficient to bind the Society and
 " their successors; as, in contracts made betwixt the Town of
 " Edinburgh and others, the clerk's subscription for the Town is
 " sufficient to bind them; and the foresaid act is recorded in the
 " books of federunt, and so could not be an illusion put upon the
 " Lords.—And whereas it is urged, That the Advocates there-
 " after reclaimed, and gave in a petition to the Lords; and
 " whereupon, by act of the Town Council, the Annuity was
 " restricted to seven years;—it is answered, *There is nothing upon*
 " *record to evidence this, albeit the registers of the Town Council of*
 " *Edinburgh has been searched to that effect*;—and the said act of
 " federunt 1637 years, was past upon the 29th day of July, and
 " so not the last day of the Session.—And, as to what is objected
 " against the act of Parliament 1661 years, as being ane private
 " act passed without citation of the parties,—it was answered,
 " Whatever may be alleged *anent ratifications*, which pass of
 " course,

" course, and in bulk together, without reading, except only the
 " titles thereof, that the same cannot prejudice private privileges,
 " upon that ground of law, *Quod ratificatio nihil novi juris tribuit* :
 " Yet this case is different, being an act of Parliament past after
 " public reading and consideration of the matter.—The Parliament,
 " finding it just and reasonable that the members of the College of
 " Justice, having the benefit of hearing the word, should contribute
 " for payment of the stipends of the Ministers; thereupon the Par-
 " liament *jus dicunt*, and declares them by the foresaid act liable
 " in payment of the Annuity for that end.—And there is a difference
 " betwixt private parties and societies in this case: For the Par-
 " liament, in acts which concerns societies and incorporations, use
 " not to call the parties concerned, as appears from the acts anent
 " fishings and the time thereof, and anent naturalization of stran-
 " gers, and the acts taking away the gifts of salt, brandy, and to-
 " bacco, to none of which the parties concerned were called; and
 " the reason why parties should be called where a private party's
 " right is taken away by act of Parliament, is because the parties
 " interests being *in facto*, was not represented; whereas here,
 " it was the *interest of a Society, who had several members up-*
 " *on the Parliament, that heard the act passed, and did not re-*
 " *claim*: And the privileges of the Council and Session being
 " notour and known to the Parliament, they passed this act
 " upon the grounds of reason and equity, and after confide-
 " ration of the privileges of the College of Justice; and *as the acts*
 " *of Parliament granting the privileges of the College of Justice, were*
 " *passed without calling any parties concerned, so they might in like*
 " *manner pass this act without calling the College of Justice*. And
 " it is clear, by several decisions of the Lords, that where the
 " Parliament have taken a particular case into their considera-
 " tion, and *passed an act thereupon*, that the Lords of Session
 " cannot thereafter question the same if it was just or unjust;—

" as

“ as was found in the case of the Earl of Rothes, 1621
 “ years. And whereas it is insinuate, that decision was before
 “ the act *salvo* 1633, it is answered, The act *salvo* 1633, is only
 “ declaratory of the meaning of former acts *salvo*, which had
 “ the same import with the act *salvo* 1633 years. And whereas it
 “ is alleged, that the act 1661 years for the Annuity, is inconsist-
 “ ent with the act ratifying the privileges of the College of Justice,
 “ it is answered, The act for the annuity is posterior to the other;
 “ and both the acts having passed in the same session of Parlia-
 “ ment, within a few weeks of one another, if the Parliament have
 “ thought fit that the one had derogate to the other, they
 “ would not have passed the same. *2do*, The act whereupon the
 “ suspenders foundeth, being only a ratification of their privileges,
 “ it cannot prejudice the chargers, who have a *special act* in their
 “ favour, of the particulars in contraverſie; and the suspenders
 “ cannot allege that they have a privilege of exemption from this
 “ Annuity, whereunto they are liable *de jure communi* to the Mini-
 “ sters, in respect of their service and incumbency, unless they in-
 “ struct their right to that special privilege, the ratification being
 “ only of their privileges *in general*; and any immunity granted
 “ to them from taxes and impositions, *cannot comprehend this of*
 “ *Ministers stipends*, which are not understood to be included un-
 “ der impositions in general privileges, being *stricti juris*, and not
 “ to be extended: And albeit, in the infancy of the College of Jus-
 “ tice, when members were but few, their exemption could be no
 “ great prejudice; but *now, their number being so multiplied, their*
 “ *exemption would be a great burden to the town of Edinburgh.*

“ Whereunto it was *duplied* for the members of the College of
 “ of Justice, That, notwithstanding of what is answered for the
 “ Town of Edinburgh, the declarator of the privileges of the Col-
 “ lege of Justice is founded on acts of Parliament, which granted
 “ the saids immunities and privileges to the Lords, and *by conse-*

“ quence, to other members of the College of Justice, who are sub-
 “ servient attending them, and which has been founded by acts
 “ of sederunt; and any privileges which were granted to the Lords,
 “ by contradistinctions from the other members of the College of
 “ Justice, these, by the act of Parliament 1661 years, are commu-
 “ nicated to the rest of the members of the College of Justice; and
 “ that the Lords were excoemed from payment of the annuity, it
 “ appears by the act of the Privy Council; *which exemptions*
 “ *must be extended to the rest of the members.* And whereas it
 “ is pretended, that they are liable in payment of the Ministers
 “ stipends, *ex jure communi*, as being hearers, it is answered, That
 “ ground is frivolous; for persons are liable to pay the Ministers
 “ stipends upon the account of the teinds, and not as residents
 “ and hearers; and the Town of Edinburgh are not concerned in
 “ this case; for the Town of Edinburgh will not be liable to them;
 “ and this Society are willing enough to contribute to a minister of
 “ their own, but have reason to oppose the Town’s exacting of the
 “ Annuity as a thing due; and the Ministers could have no action
 “ against them for this Annuity. 2do, The Town of Edinburgh
 “ were so far from thinking that there was any moral obligation
 “ upon the inhabitants for payment of this Annuity, that they pe-
 “ titioned the Parliament for a warrant to impose the same, in anno
 “ 1633, and wherein they express a certain quota, viz. 12,000
 “ merks, which may be uplifted from the other inhabitants; and
 “ the College of Justice their proportion will be found to be very
 “ small, and imports not that they cannot produce an act of Par-
 “ liament for that particular exemption from the Annuity; for the
 “ act of Sederunt, whereupon the Town founded, bears, *That the*
 “ *College of Justice was exempted by the act of Privy Council; and it*
 “ *being in facto recenti, must be presumed to be true,* seeing it could
 “ not escape the Lords of Session; and so that act imports, that
 “ they never excoemed before the said act. And whereas it is
 “ urged,

“ urged, that the Ministry of Edinburgh, being in *decennali et tri-*
 “ *ennali possessione*, they are not obliged *docere de titulo*; it was an-
 “ swered, That albeit that may liberate them from instructing
 “ their title, yet it hinders not the fuspenders *docere de titulo*; and
 “ the act of federunt being the chargers title, it contains the fore-
 “ said exemption. And whereas it is insinuated, That albeit there
 “ had been such an exemption, yet it was surrendered by the act
 “ of federunt, which was unquestionably a true act; it was an-
 “ swered, Albeit the act was true, and that the compearance of
 “ *the Advocates and Writers being ready to gratify those in power for*
 “ *the time*, gave occasion thereto, yet that cannot hinder the sus-
 “ penders to question that act, both as to the matter of fact, if all the
 “ members of the College of Justice compeared, and if there could be
 “ any such concession, to take away the privileges of the Society fet-
 “ tled by law, and bind their successors; for that consent of theirs
 “ was not subscribed; and we see that judicial references by par-
 “ ties are not taken upon trust, without the parties own subscrip-
 “ tion; and it appears that the concession was only by the Dean of
 “ Faculty, and the Administrators of the Advocates their stock,
 “ with some others, whose power could extend no farther than
 “ the subject of their administration: And, that they were conscious
 “ that concession could not oblige their successors, it appears by
 “ that provision in the act, that any Advocates that were to enter
 “ afterwards, should ratify the same; and notwithstanding of the
 “ concession, the parties might refile. And some of the most emi-
 “ nent of the advocates did thereafter reclaim, by a petition given
 “ in to the Lords in anno 1643, a double of which petition is pro-
 “ duced, and whereupon the Town Council did restrict the Annu-
 “ ity to seven years. And Mr. David Heriot has left a paper under
 “ his hand, bearing the whole progress of that affair of the Annuity,
 “ and what Advocates consented to that concession, and who reclaimed.
 “ And as to the act of Parliament for the Annuity in anno 1661,
 “ it

" it was answered, That act being *a private act of Parliament*, it
 " *falls under the act salvo* passed that Parliament, which declares,
 " That any private acts passed in that Parliament cannot take away
 " parties rights; but that the Lords of Session, notwithstanding of
 " the saids acts, are to decide according to the rights which the
 " parties had before these acts: And it is granted, that the Parlia-
 " ment, *either by one public law, or by a decision betwixt these*
 " *parties*, might take away the privilege of the College of Justice.
 " But this act founded on, is only *a private unprinted act*, passed
 " without citation, or hearing of the parties concerned; and the
 " acts of Parliament instanced, whereby several privileges were ta-
 " ken away, are *printed acts*, and so do not quadrate to this case.
 " And as to the inconveniency urged by the multiplying of the
 " members of the College of Justice, it was answered, The town
 " of Edinburgh could have no prejudice thereby, seeing the town
 " will likewise increase, and so will be the more able to pay Ministers
 " stipends. And whereas it is alleged, that the act 1661 years for
 " the Annuity, was advised by Sir John Gilmor, it is calumnious,
 " *it being verbatim the same act that was passed in the year 1649:*
 " That the Advocates being a collegiate body, could only con-
 " tract for the utility and advantage of the Society; *and suppose the*
 " *Advocates had compeared, and consented themselves to the Town's*
 " *jurisdiction, and to watching and warding, that could not take away*
 " *their successors privileges:* That all acts impetrate by private parties,
 " for their private interest, as the act 1661 was, fall under the act
 " *salvo jure*, because the same might have been impetrate upon
 " misrepresentation of fact: That albeit there have been no mis-
 " representation, yet the Parliament had not under their consider-
 " ation the *rights of third parties*.

" *Triplied by Sir George M'Kenzie*, That although, to land-
 " ward, the teinds be the rule for payment of Ministers sti-
 " pends; yet in towns, there being no teinds, the inhabi-
 " tants must be liable. The College of Justice can show no
 " express

“ express act of Parliament for this exemption ; and privileges
 “ are not due, but where they are granted : That Ministers stipends
 “ cannot come under *taxations* and *impositions* ; otherwise the mem-
 “ bers of the College of Justice should be free of them to land-
 “ ward, as well as in burgh. 4^{to}, The Parliament have here clear-
 “ ed the meaning in that general act ratifying these privi-
 “ leges ; in so far as, *within a few days thereafter*, they, be-
 “ an special statute, declared the College of Justice liable
 “ *to the payment of the Annuities*, and regulated the way of
 “ payment thereof ;—*et specialia non solum derogant, sed etiam ex-*
 “ *plicant et restringunt generaliora.* And it is offerd to be proven,
 “ That the Privy Council, to whom that matter was remitted by
 “ the Parliament, upon application made by the Advocates, de-
 “ clared all the inhabitants in the Town liable. And as to the act
 “ of sederunt 1637, the chargers do not found their right there-
 “ upon, as to renunciation of the Advocates privileges ; *but makes*
 “ *use of that act for clearing what was the mind of the Lords of the*
 “ *Session in relation to this privilege*, who certainly would adjust
 “ the same according to law : And that act has all the essentials of
 “ an act, viz. the Advocates compearing and consenting, the Lords
 “ enacting, and the Clerks writing.—And whereas they say there
 “ was no opportunity to crave redress, by interruption of the Ses-
 “ sion, they opposed the books of Sederunt and Durie’s Practiques,
 “ bearing, That the session sat *two years* before ever the Advocates
 “ made any application to that purpose ; and the act of Parlia-
 “ ment 1661 years, does only ratify their former privileges ; and
 “ and the old acts of Parliament, concerning the privileges and
 “ immunities of the College of Justice, cannot be extended to
 “ this of the Annuity, which then *was not in being* ; and the An-
 “ nuity cannot be comprehended under impositions, because that
 “ is said to be imposed, which otherways is not due.—And where-
 “ as it is insinuate, that the Advocates, being a collegiate body,
 S “ cannot

“ cannot renounce their privileges,—it was answered, The act of
 “ federunt, 1637 years, is not a renunciation of their privileges,
 “ because it does not appear *that the immunity from the Annuity was*
 “ *ever granted to them; and their concession was a transaction in dubio,*
 “ *and for the advantage of the society, in so far as the Parliament,*
 “ 1633 years, having remitted the matter of the Annuity to the
 “ Privy Council, and the College of Justice having applied to
 “ them for freedom therefrom, they, by their act, declared, That
 “ all the inhabitants of the Town, who took houses for an year
 “ or half year, and accordingly remained and resided therein
 “ with their family the most part of the year or half year, to be
 “ liable in payment of the Annuity, which comprehendeth the
 “ members of the College of Justice. In respect whereof, the An-
 “ nuity, being *a thing unavoidable*, the Advocates and others did
 “ consent thereto, and got ease of an fifth part; and if this
 “ should not be sustained, there could be no contracting with
 “ societies; and therefore the concession was not an renuncia-
 “ tion of their privileges, but an acquiescing *in dubio* to the
 “ act of Parliament and Council *in dubio*, which the administrators
 “ of any society might doe: And which transaction was so ration-
 “ al, that, for several years, they did not reclaim, and never got
 “ redress from the Lords.—And whereas it is alleged, that the act
 “ of federunt bears that the College of Justice had been excoemed,—
 “ it was replied, That is only in the narrative of the act; and an
 “ error in the narrative imports not, being usually passed over with-
 “ out strict noticing;—*et non creditur referenti, nisi constet de re-*
 “ *lato*. And the Town’s right to the Annuity is sufficiently
 “ founded on the act of Parliament 1661 years, which cannot be
 “ said to be a private act, upon that ground that it is not *printed*,
 “ there being laws unwritten; and this being but the limitation of
 “ some general privileges granted by the Parliament, there was no
 “ society to print the same; and the Clerk of Register might omit
 “ the

“ the printing *for the benefit of extracts*. And it cannot be said
 “ that this was procured by subreption, and without consideration
 “ of the interest of the College of Justice ; for it appears by the nar-
 “ rative of the act, that the Parliament proceeded upon considera-
 “ tion of the public good. The town of Edinburgh, being the seat
 “ of the Supreme Judicatories of the kingdom, and, upon that ac-
 “ count, people of all sorts resorted thereto, that it is expedient the
 “ Ministers thereof should be persons eminent for their gifts, and
 “ have provisions suitable: And they could not but have under
 “ their consideration the interest of the College of Justice, having
 “ but a few days before ratified their privileges, which could not
 “ escape their memories. And by the act it is declared, that it
 “ shall not prejudice the College of Justice of their privileges ;
 “ which imports *that the Parliament understood immunity from*
 “ *the Annuity, to be none of their privileges*. And albeit rights
 “ competent to persons *jure privato*, cannot be taken away by acts
 “ of Parliament without citation, yet privileges granted by the
 “ Parliament to societies may be taken away, and far more may
 “ be limited by acts of Parliament without citation ; for, as to
 “ societies, there needs no representation of their interest to the
 “ Parliament, seeing they have them under their special confide-
 “ ration and care. And this cannot be called a private act of Par-
 “ liament, seeing it extends not only to the College of Justice, but
 “ to all the people of Scotland who come to reside in Edinburgh ;
 “ and it was statuted upon general considerations for the public
 “ good of the kingdom ; and the Parliament did no more bur-
 “ den the College of Justice than they did themselves, having
 “ made the act to extend to all persons inhabitants of the Town.
 “ And that they had the interest of the College of Justice under
 “ their consideration, it farther appears ; because the act provides,
 “ anent the uplifting and employing of the Annuity, that so many
 “ of the College of Justice should be present, and see how the same
 “ is

" is employed. And as to the act *salvo*, 1633 years, that can only
 " be understood of acts concerning private parties rights, and not
 " of acts interpreting and restricting general privileges granted by
 " the Parliament themselves. And as to the acts of the Town al-
 " leged upon by the suspenders, that in April 1637, signifying
 " that the College of Justice were refractory, imports not its
 " being before the act of sederunt, whereby the members of
 " the College of Justice did consent to the Annuity; and the
 " act 1642 years was a temporary act, appointing the Annui-
 " ty to continue for the space of seven years, until they should
 " take some other course for payment of the Ministers sti-
 " pends: And it does not mention, that the refractoriness of the
 " College of Justice was the occasion thereof; and this did not im-
 " pede the Council thereafter to make another act for payment of
 " the Annuity; and it cannot be said that the Town of Edin-
 " burgh has mortifications sufficient to pay their Ministers sti-
 " pends; for, upon stating accounts between the Town-Treasurer
 " and the Kirk-Treasurer, the Kirk-Treasurer was found to be
 " superexpended in the sum of 3800 l. Scots money; and this An-
 " nuity being the foundation of providing six Ministers, and their
 " provisions being moderate, if the Annuity fail by the College of
 " Justice not paying their part, the Town will be forced to quit so
 " many of the Ministers, and thereby the people want the benefit
 " of preaching, to save the privileges of the College of Justice.

" Whereunto it was *quadrupled* by the said Sir George Lock-
 " hart and Sir John Cunningham, for the part of the members of
 " the College of Justice: That whereas it is alleged, that this pri-
 " vilege of immunity from the Annuity cannot be reclaimed, un-
 " less a special grant thereof were instructed,—it was *Quadrupled*,
 " The title is clear, in so far as, by the acts of Parliament, the
 " Lords of Session are declared free from all taxes and burdens,
 " which not being privileges *per sonam, sed causam*, and granted to the
 " Lords

“ Lords that they may attend to the administration of justice, it
 “ must be communicated to the rest of the members of the College
 “ of Justice, who are subservient to them; for, in law, *favores*
 “ *sunt ampliandi*, as privileges granted to ambassadors are extended
 “ to their families; and the Lords have so interpreted *these privi-*
 “ *leges by acts of Sederunt, and by decisions have vindicated the mem-*
 “ *bers of the College of Justice from all invasions of their privileges;*
 “ *and particularly Advocates, Scribes, Writers to the Signet, and all*
 “ *other members of the College of Justice, are free from all taxa-*
 “ *tions, stent, or impositions, raised for any common cause con-*
 “ *cerning the well of the realm, or any other private cause con-*
 “ *cerning the Prince alienarly, or whatsoever cause or causes;*
 “ and if any of them happen to be stented or poynded there-
 “ for, all sums of money, and all goods taken from them,
 “ ought and should be returned, to every one his own part,—
 “ as was found by the Lords the 15th day of December 1565,
 “ Advocates *contra* Edinburgh; but if any of them exercise
 “ merchandize, they should not bruik the privileges and immu-
 “ nities foresaid,—the 2d of November 1565, Edinburgh *contra*
 “ Moscroft*; and the Lords of Session are also free of the thirds
 “ of benefices payable to the King, except Prelates,—the 15th De-
 “ cember 1561 years, Lord Provan *contra* Comptroller; and the
 “ 18th day of July 1566 years, Pearson of Eagleshaw *contra*
 “ Comptroller;—and by the act of Parliament 1661 years, *the pri-*
 “ *vileges granted to the Lords, are extended to all the members of the*
 “ *College of Justice.* And whereas it is pretended, that the Mini-
 “ sters stipends do not come under taxations and impositions, it
 “ was *quadrupled*, The cause of immunity from taxations and im-
 “ positions, does not import an exemption from these impositions
 “ whereunto they are liable by the law of the kingdom, as are
 “ Ministers stipends in the country; but where the Ministers sti-
 “ pends comes to be imposed by *way of collection and stent within*
 T “ a burgh,

* These decisions are stated in the beginning of this Account.

“ a burgh, the immunity strikes as well against the stent for Ministers
 “ stipends, as for any other use of the burgh; and by the act 275th of
 “ the 15th Parliament of King James VI., the College of Justice
 “ are declared not liable to stent for the use of the Poor, which are
 “ no less favourable than that of Annuity. And whereas it is ur-
 “ ged, that, in this matter, the College of Justice did transact, which
 “ they might do *in dubio*; it was answered, *imo*, That they, being a
 “ Collegiat Body, could not contract nor transact, but *debito modo*,
 “ by subscribing. *2do*, This being a fundamental privilege settled on
 “ them by law, for important causes, and competent to their suc-
 “ cessors, they could not renounce the same, without consent of
 “ the authority which gave the privilege. *3tio*, Here was no
 “ ground for any transaction, there being nothing dubious, but
 “ the matter being clear. *4to*, To an transaction it is required,
 “ *ut lis sit mota et non sopitanda, ut aliquid detur et aliquid retineatur*,
 “ none of which occurs in this case; for, whereas it is in-
 “ sinuate, that the sixth part of the Annuity was gotten down by
 “ the transaction, that does not appear; and there are great exor-
 “ bitances in that act of sederunt, such as would hardly escape the
 “ observation of any rational man; the execution in case of not
 “ payment, being appointed by poinding and warding; and it is
 “ provided, that no suspension should pass of charges for the An-
 “ nuity, but *in presentia*; whereby they were stated in a worse case
 “ than other inhabitants of the burgh. And as to what is alle-
 “ ged anent the members of the College of Justice their acquies-
 “ cence, it was *replied*,—To the *first*, it appears that the Advocates
 “ did reclaim, by the foresaid petition given in to the Lords,
 “ wherein they disclaim that consent pretended to have been gi-
 “ ven in 1637 years, the copy of which petition is produced; and
 “ as a farther document thereof, a paper is produced *under the*
 “ *hands of Mr. David Herriot, deceased many years ago*. *2d*, The acts
 “ of their own Town Council makes the contrary appear, viz.
 “ The

“ The acts 1637 and 1648, bearing, that the Annuity met with
 “ opposition from the College of Justice ; and, upon that account,
 “ they, by an act in 1642 years, restricted the Annuity to seven
 “ years. 3^d, All that the acquiescence can import is, that the
 “ Town is not liable, *condictione indebiti*, to refund the bygone An-
 “ nuities which they have received. And whereas it is pretend-
 “ ed, that as the act of Parliament might take away their privi-
 “ leges, so they might restrict them ; it was answered, That it’s
 “ granted, that the Parliament might take away the said privilege
 “ *after citation of the parties ; and not otherways*, except it were done
 “ by a general law ; they being as secure as to these privileges,
 “ as they are in their properties, both being settled by law. And
 “ whereas it is urged, that the act 1661 years, is not a pri-
 “ vate act of Parliament ; it was *answered*, That it is not a pub-
 “ lic act, because the Parliament does not proceed therein *ex pro-*
 “ *prio motu et certa scientia*, but the same was impetrated by the
 “ town of Edinburgh ; *et non disponit in universum*, as to all burgeses
 “ in the kingdom ; but it is only in favours of the town of Edin-
 “ burgh, and it is *verbatim* the act of Parliament 1649 years, *except*
 “ *that it mentions not the good old cause* ; and in it there were great
 “ concealments of matters of fact : *Et non refert*, whether the act
 “ concern private parties or incorporations ; for, seeing it wants
 “ the necessary requisites and indispenfible solemnity of a public
 “ law, it is only a private act, against which the members of the
 “ College of Justice their privileges are secured by the act *salvo*
 “ *jure*. And whereas it is insinuate that the Parliament had their
 “ privileges then under consideration, it was *quadruplied*, That no
 “ such thing appeared from the act ; and these words, *without*
 “ *prejudice to the members of the College of Justice*, will not im-
 “ port the same.—And therefore it was hoped the Lords, with re-
 “ spect to that act, will determine in this case according to the ge-
 “ neral law of the kingdom.”

The

The foregoing debate is engrossed *from the record*, on purpose that all concerned may judge of the merits of the question.

Lord Fountainhall, one of the Counsel for the Town, has left a very particular account of this debate, which he says took up four or five days pleading in the Inner House.—Several points are supplied by him, which have not been minuted by the clerk.—“It was alleged (he says) for the Good Town, that they “judged it their misfortune to contend with so powerful an adversary as the College of Justice, (for the Lords had only commanded Sir George M’Kenzie the King’s Advocate, and myself, “to be advocates for the Town); but the justice and piety of the “cause was what balanced these advantages.—That the cause was “founded in religion, for the subsistence of their Ministers, for “whom all nations, even the very Heathens, had made by nature’s light honourable allowances: And as it was no more but “just that they should participate of our temporal things,—The “Good Town, with much satisfaction, had its gates always open “to receive in gentlemens sons, and others, who came from all parts “of the kingdom towards this Illustrious Society, and were no less “glad to see them arrive at so great improvements of their fortunes.—That by a bountiful reciprocation, like the circulating “of the blood in our veins, she as a kindly mother sends forth her “colonies back to the country again.—It is hoped the Lawyers, who “are *the Priests of Righteousness*, and oracles of the nation, will “not practise a *societas leonina*, which they condemn in all other “cases;—they will not take a share in the benefit of the Gospel, “and cause the Town bear all the burden.”

His Lordship repeats a great part of the argument as already set down; and adds, “That the College of Justice may be “so kind as to consider, that much of the Town’s debt is contracted on their account. For their accommodation they had “built that noble fabric of the Parliament House, and reared it
“ on

“ on the place where their Ministers houses of old did stand, being
 “ St. Giles’s church-yard. They built the Tron Church, brought
 “ in the water by conduits, &c. &c.—To whom were they doing
 “ it? Were they not making friendship thereby for their own
 “ souls? (if this expression may be pardoned as somewhat Popish)—
 “ Is it not to the city of our solemnities, our metropolis and capi-
 “ tal, the *communis patria* for citations and confirmations, erected in
 “ a royalty *a tempore antiquissimo*, adorned with many glorious con-
 “ cessions of our Kings, complimented with badges of Royalty, and
 “ parcels of the Sovereignty, as scarlet robes, a sceptre and sword;
 “ the Chief Magistrate made his Majesty’s immediate Deputy and
 “ Lieutenant, and ordained, by his Majesty’s own ranking, to take
 “ the precedency, within the Town’s liberties, of all subjects, next to
 “ yourself my Lord Chancellor.—That this incorporation (like all
 “ other things) was very inconsiderable in its commencements;—
 “ and when the Advocates were not above ten or twelve, it was
 “ reasonable to encourage them with privileges; when they were
 “ in their swaddling clothes, it was charity.—*But now to continue*
 “ *these fictitious and imaginary privileges, when they are all turned*
 “ *so potent and formidable, is what will shock the common reason of*
 “ *mankind.*”

The speakers for the College of Justice, according to Fountain-
 hall, repeated the arguments already stated; and added, “ That
 “ the Town is ill advised to contend with them, from whom
 “ they derive much, both of their grandeur and wealth; and
 “ if the Session deserted them, though only for a while, it would
 “ expose them not only to penury, but likewise to contempt.”

To this it was *answered* for the Good Town of Edinburgh,
 “ That they were far from envying the prosperity and flourish-
 “ ing of the College of Justice; great and happy might they
 “ be—part of the Town’s concern being wrapt therein; but
 “ it behoved to be cautioned and qualified, as the acclamations to

“ Pompey were in Rome, *Sit salva hujus civitatis libertate potens!*—
 “ It is not fit that the Session, like a diseased spleen, grow too big
 “ for the body that would discompose the whole politic frame.—
 “ For ought we can know or conjecture, every gentleman’s family
 “ in Scotland, that has more sons than one, are designing them to
 “ follow the profession of the Law.—*In the next generation the*
 “ *most part of the inhabitants of Edinburgh shall be Members of the*
 “ *College of Justice.*—Were it reason that they should plead immu-
 “ nity from the Ministers stipends, or that the far lesser part of the
 “ burgeses and inhabitants of the Town shall bear the whole burden
 “ thereof?—Why do not members of the College of Justice, by this
 “ same very rule, refuse to pay any stipend in the places of the
 “ country where they have interest?—If they have a privilege, why
 “ does it not defend them *ubique?*—*But this is a mere begging of*
 “ *the question, and is gratis dictum.*—*Let them produce us one scrap*
 “ *of a pen for this so boasted a privilege of theirs.*—*Show us but where*
 “ *it stands recorded, and we will yield up the whole cause.*—*The mistake*
 “ *is fundamental, and the error in the first concoction.*—*They presuppose*
 “ *and beg a privilege; whereas there is no such thing in rerum natura.*
 “ —If they say the act of sederunt 1637 mentions their exemption
 “ by the Secret Council, the same is a narrative framed by the
 “ Lawyers themselves, to give a rise and colour to that act; and is
 “ *funditus* convelled and redargued by the books of Secret Coun-
 “ cil produced, bearing the direct contrary, and ordaining all
 “ to pay Annuity, *Qui fundat se super privilegia debet docere.*—
 “ —*All their brawling* is not able to shake themselves loose of
 “ the act of sederunt.—These gentlemen would be very angry
 “ if I should deny them to be a Faculty and Corporation vest-
 “ ed with that power to enter into contracts as any other Col-
 “ legiat Meeting is.—And whereas they would thrust the act
 “ of Parliament 1661 for their Annuities quite out of doors, the
 “ Lords of Session are desired to cast their eyes upon a decision of
 “ Durie’s,

“ Durie’s, 10th December 1672, Earl of Rothes against Gordon,
 “ where the Lords found,—A particular act of Parliament, where
 “ there was no ambiguity resulting from the interpretation of it,
 “ fell not within the act *salvo*; and that the Lords had no power to
 “ decide, whether justly or unjustly stated, but that the same ought only
 “ to be tried in Parliament.—And Haddington, in his *Practick*, 1611,
 “ tells that the Lords sharply reprov’d an Advocate for debating the
 “ legality and justice of an act of Parliament.—So that the Lords will
 “ find that they are not impow’red to meddle with this act, much less
 “ to go over its belly altogether.”

Whereunto it was replied for the College of Justice, “ That
 “ they needed not instruct a privilege, because, as to immunity
 “ from burdens, they are founded *jure communi*, as Antonius
 “ Faber shows; and as for the possession the Town has, ’tis violent
 “ by illegal poidings.—The Lawyers, what they give of that
 “ kind towards the sustentation of the Ministers, will pay it as a
 “ benevolence, not as a debt that can *ex necessitate juris* be ex-
 “ torted: And if the Town will pass from their compulsitors, the
 “ College of Justice will very chearfully contribute and assist.—And
 “ yet these gentlemen, the Ministers, who deserve their stipends
 “ very well, need not be anxious that any thing will be deducted
 “ off their stipends, (as the Town of Edinburgh threatens them,
 “ if the College of Justice’s Annuities be taken from them): For,
 “ 1mo, All those who ought to have the name of the College of
 “ Justice, viz. the Lords, Advocates, Writers to the Signet, and
 “ Clerks, (excluding ordinar Writers, Notaries, Messengers, the
 “ Lords, Advocates, and Writers men, Clerks of Exchequer, &c.)
 “ their Annuities will be within 1200 merks be year, as after
 “ trial and calculation was found. 2do, The College of Justice
 “ offers to farm the Annuities and other rents which have been
 “ mortified and allotted for their Ministers, and to pay their whole
 “ twelve Ministers completely therewith, so that there shall be no
 “ deficiency;

" deficiency ; so that, of necessity, there has been either malversa-
 " tion or negligence in the bygone administration of it.—Where-
 " as it is pretended, that this Annuity is not an imposition, and
 " so not comprehended in the act exeeing from impositions, 'tis
 " desired they may give it another name.—And Gasper Clockius,
 " in his learned tract, had spent a whole section to prove, That *Legum*
 " *Doctores et Professores*, are *immunes ab onere collectionum*.—The act
 " of federunt could never be sufficient, without a consent in
 " write ; and they had scrolls of acts, under Mr. David Herriot's
 " hands, Advocate, and other memorandums, bearing, That the
 " Town had restricted the said act of the Annuities to five years ;
 " and they had exhibition depending for recovery of the princi-
 " pals, and craved the Town of Edinburgh might be so ingenuous
 " as to exhibite their public Acts and Records, which might give
 " light to the truth," (which the Town did, but nothing was
 " found in them to fortify their allegations) ; " and that in the
 " 1568, the College of Justice had obtained a decreet of declarator of
 " their privileges against the Town, but the same was now lost and ab-
 " stracted, and not booked."

The Reporter concludes, " That when the College of Justice
 " came to repeat the points of their declarator, they insisted, that
 " they might have convenient seats in the Churches for hearing
 " sermon, and that the meanest Burgeses might not be preferred
 " to them, as has been hitherto done in competitions.—And here
 " (continues Lord Fountainhall) when it came to a communing,
 " they craved the High Cathedral Church to be appropriated for
 " the Lords of Session, and the rest of the College of Justice, and
 " to have their own Minister, and they would pay him.—But the
 " Town of Edinburgh cannot part with any Patronage within
 " their bounds, in the undoubted right whereof they are stated.—
 " The President declared, he would hear no other point till that
 " of the Annuities was determined."

To this report, Lord Fountainhall adds the following *nota* :

Fountainhall,
vol. I. p. 21.

“ The mortifications the Town sets apart for their Ministers
“ stipends, are,

“ *1mo*, The Annuity, which is roused at about 11,000 merks.

“ *2do*, The Rents paid for the Seats in the Churches, amount-
“ ing to 3600 merks.

“ *3tio*, Their Old Kirk Rents, being mortifications and ground-
“ annuals due to the Chaplainries and Altarages of St. Giles’s
“ Church, amounting to 3000 merks.

“ *4to*, The merk upon the tun of all goods imported into
“ Leith, fell at 3400 merks; making in all little more than 20,000
“ merks; whereas, the Town, without ever having got a charge
“ of horning, or being pursued past memory of man, pays 27,000
“ merks to their Ministers.”

Sir George Lockhart was in the beginning of this action the principal suspender,—counsel for the College of Justice during its dependence,—and President at the time of the decision of this question, which happened upon the 17th February 1687—“ The
“ Lords sustained the declarator as to the members of the College
“ of Justice their immunity and exemption from payment of the
“ Annuity for Ministers stipends; and decerned and declared
“ them free thereof, both as to bygones and in time coming.”

Ever since the date of this judgment, pronounced by the College of Justice in favour of itself, the whole gentlemen of the profession of the Law have refused to contribute in any shape to the support of the parochial Clergy of the City.

The principal purpose of this paper is to propose and arrange the facts and arguments already used by the parties in the present business, so as to be farther reasoned upon, if requisite, by learned counsel.—No commentaries, therefore, are to be made upon this celebrated judgment, more than are necessary to point out the great lines of it to the Public.—A just and simple idea, it is thought, may

be formed of the case, by extricating the authorities founded on by each of the parties, from the multitude of words and circuitous reasonings, in which they seem absorbed by the pleadings.

The College of Justice, pursuers, brought forward, upon their part,

The title of the Roman law, *De Advocatis*.

The Letter of Protection of James V., liberating the Lords of Session from watching, warding, and other offices within burgh. Some early Decisions of the Court itself, in the matter of National Taxes.

The General Ratifications of the Privileges of the College of Justice, from the reign of James V. to this present time.

The Annual Statute of Form, termed *Salvo jure cujuslibet*.

Some Acts, said to be copies from the Record of the Town Council of Edinburgh, but of which no originals were to be found.

Some Memorandums, under the hand of Mr. David Herriot, an Advocate, who, it is said, had in former times employed himself in the disputes with the Town.

Antonius Faber, in his *Codex Sabaudus*.

Gaspar Clockius, in his Tract, *Nomico-Politicus*.

The City of Edinburgh, Defenders, opposed

The reason and equity of the demand, that all her Inhabitants should pay for a benefit which all of them received.

An act of Parliament referring the settlement of the provision of the City Ministers to the Lords of Privy Council, and declaring, that their decree should be equal in effect to a statute of Parliament,—*Anno 1633*.

Act of Privy Council, in consequence of a reference imposing the Ministers Stipends upon all the members of the College of Justice, the Lords excepted,—March 1633.

Royal

Royal Signature of Charles I., approving the decree of his Secret Council, and ordaining a charter to be made out in terms thereof,—*Anno* 1636.

Another Royal Signature under the King's hand, approving of the first,—*Anno* 1637.

Act of Sederunt of the Lords of Session and whole members of the College of Justice, engaging, for themselves and successors, to pay the Annuity,—*Anno* 1637.

Act of the Committee of Estates, for raising an additional Stipend, and specially subjecting the College of Justice,—*Anno* 1648.

Act of Parliament ratifying the act of the Committee of Estates, and containing farther provision for executing the same,—*Anno* 1649.

Act of the Restoration Parliament, reviving and re-enacting the preceding statutes, with additions in favour of the City,—*Anno* 1661.

Lastly,
Possession for 60 years at least.

If this cause shall be brought to receive a second determination, it is more than probable that new matter and new argument will not be wanting on either side.

For the Town it will no doubt be pled, That the act of Parliament 1661 could not be possibly touched or weakened by the act *salvo* of the same session, according to any rule of construction, whether arising from form or substance.—The subject-matter of the statute was not *new*.—That law did not create or extend an imposition or tax unheard of before;—it did no more than revive a series of ordinances *originating with a legal government*, the equity and propriety of which had continued them in force, during the time even of anarchy and rebellion; and which, upon the same account, were, by the act 1661, once more replaced upon a lawful establishment.—At the date of that act, the city of Edinburgh was in possession of the fund in question.—The rights

rights then of no third parties could possibly be hurt, by confirming to the City the thing it had been so long in possession of.

If the College of Justice deemed their privileges to be hurt by the act 1661, and preserved by the form of the act *salvo*, it was the business of the Court to establish this in Parliament; in place of which, they allowed the statute to take effect, and be executed for about 18 years, *i. e.* till the 1679, when the action of declarator was instituted.

The ratification in favour of the College of Justice, 1661, extending its privileges to the Advocates, Writers, &c. proves, that they had been *confined to the Judges before that time.*

The Town of Edinburgh was then in possession of the Annuity; and therefore, that act could have no relation to it.

The statute in favour of the Town, was *posterior* to that in favour of the College of Justice:—A circumstance, which, of itself, *ought to have been decisive* of the point in question.

Before general ratifications of privileges could avail the members of Court, it behoved them to establish, that an immunity from the support of the Clergy was of the number of the privileges ratified.

All these acts founded on by the College of Justice, were mere ratifications, passing in Parliament without calling or hearing parties: Their effect therefore, *quoad* the rights of the city of Edinburgh, so far as they altered, innovated, or impinged upon any of them, were undoubtedly taken off by the acts *salvo jure*.—These statutes therefore struck against the College of Justice.

The meaning and principle of so many acts, *ratifying the very same things*, in different reigns, are not obvious, and therefore should be here explained.—The Barbarian Princes, the founders of the present kingdoms of Europe, were not deemed proprietors, but administrators of their dominions.—Whatever they gave away, therefore, appertaining to the nation, was presum-

ed

ed to return upon the death of the givers, unless the donations were afterwards confirmed or ratified by their successors.—This was especially the case, where privileges, immunities or franchises, had been granted, which in any shape diminished the royal powers *.—*Confirmation* was not, as many people suppose, a form originating in the feudal law: It was established among the Romans of the Western Empire, adopted by the nations by whom the Empire was ruined, and afterwards received into the number of the feudal *formule*. It behoved all the ecclesiastic benefices to be confirmed, either by the Pope or the higher clergy; and it behoved the vassals in lands to obtain their grants confirmed by their respective superiors.—As the intellectual powers of mankind sunk, the ideas of property, which, among the Romans, had arrived to perfection, were thrown back into uncertainty, and the alienation of it loaded with restraints.—From this cause, in the middle ages, whole families appear as parties, in the grants of land-property; and wherever a doubt existed, the only method for removing it, was, by confirmation or ratification.—This, says the learned Spelman, “is the cause why, that in times near the
“ Conquest, you shall see so many several persons, by their several
“ deeds in several ages, grant and confirm one and the same
“ thing.”—The observation applies to the Collection of our Scottish charters, published by *Anderson*, which, from the reign of Duncan downwards, is principally composed of confirmations by successive Princes, their sons or brothers, of the same lands.

Rel. ancient
deeds.

These ideas and forms were preserved in the procedure of our Parliaments; and hence the annexations, dissolutions, and revocations, so frequent in the statute-books.—The first thing done by our Princes, upon their accession to the Throne, or their majority, was to execute a *general revocation* of all former grants of pro-

Y

perty

* “ Confirmatio est a Rege locis sanctis et venerabilibus inducta, quam solemne
“ erat a Principe impetrari; privilegia enim et cætera ejusmodi a Principibus inducta,
“ post illos successorum confirmatione opus habent.”—*Nota ad Marculf.*

perty and privileges, and to declare, "That they shall make no right
 "to the users or hadders thereof, but that it should be leifum to us
 "and our successors to put our hands thereto, whenever it should
 "please us, by virtue of the said revocation."—No persons, therefore,
 thought themselves secure by former grants, till ratifications passed
 under the authority of the reigning Prince; and therefore it was,
 that an act of James VI. declares, That the privileges of the Col-
 lege of Justice did not fall under his general revocation.

As to the phrase, *Salvo jure cujuslibet*, it was, at a very early pe-
 riod, inserted by the Churchmen in ecclesiastic deeds.—The clause
 crept almost into every grant in civil business.—From the Prince
 to the lowest superior, all of them contained *salvo jure cujuslibet*
et suo; and thereby the feudal rights, *not the immediate ob-*
jects of the deed, were preserved to the granter.—An annual
 act, under the same title, came to be passed in Parliament,
 the plain purpose of which was, to preserve the rights of all
 private parties from being hurt by the statutes of the Legisla-
 ture, collaterally, unintentionally, or by consequences not ap-
 parent at the time.—So far it was a proper and necessary act,
 the principle of which ought to have subsisted, without an ex-
 press law.—But, when such a general and salutary form is made
 use of to defeat the special and public statutes of the same session
 of Parliament, the principle of which had been established thirty
 years before, and the object in possession of the party, the solecism
 is too great to admit of argument.—Even the errors of our fore-
 fathers, however, are to be treated with respect, and more so the
 determinations of the Supreme Court, in whatever light they may
 appear at this distance of time.

The pleadings of Sir George M'Kenzie in this question, are no
 doubt to be considered as the argument of an advocate in behalf
 of his employers.—He has, however, left his real and private opi-
 nion of this case, in his observations on the acts of Charles II.,
 ratifying the privileges of the College of Justice.—"Upon this
 "act,"

“act,” says Sir George,” it was debated, in December 1678,
 “whether Advocates should be free of Annuity imposed by the
 “Town of Edinburgh, since they were by this act freed from all
 “impositions: And though, by a special act of the same Parlia-
 “ment of Charles II., the College of Justice was made liable to the
 “Annuity, yet they being free by this act, and the other being
 “but an unprinted act, and an act to which they were not called,
 “their privilege could not be thereby taken, albeit it was con-
 “tended, that they, being free of Annuity, was no privilege ever
 “expressly declared in their favours, but, on the contrary, was a
 “debt upon them as hearers of the word of God; and so the
 “Parliament might very well declare this privilege not to preju-
 “dice the Annuities; nor was that law concerning Annuities a
 “special, but a general law, binding all the people who came to
 “live in Edinburgh; and therefore, there needed no party be ci-
 “ted; nor was it necessary to the essence of an act of Parliament
 “that it should be printed.”

IMPOST UPON WINE AND OTHER LIQUORS.

THE first of these Imposts and Customs were vested in the City of Edinburgh by the grants of the Town and Harbour of Leith. —James III. had been relieved from confinement by means of the Citizens, and in return conferred a variety of rights upon the Town, particularly a power of levying customs upon certain merchandizes at the Port of Leith, and, *inter alia*, a duty of 1 s. 4 d. upon every ton of wine.

A Table of these Duties and Customs were inserted in the Golden Charter granted by James VI.

	s.	p.
In this Table, is set down for every ton of wine	-	2 0
For every butt of Malmsey	- - -	0 18
For Rhenish wine	- - - -	0 4
		In

In the 1609, King James, as a consolation to the City for his departure to England, conferred the honour of a Sword of State and Gowns upon the Magistracy, with a duty of 4l. Scots for every ton of wine sold in the Town, for the better support of the dignity thereof.

Upon the surrender of the great charter granted by James VI. in the hands of his son Charles I., his Majesty gave a new charter, confirming, amongst other grants, this gift on the ton of wine.

In the 1652, it is thought that the first duty of a plack upon the pint of ale and beer, was granted by Oliver Cromwell to the City of Edinburgh, in order to relieve them from the distressed situation they were then under, and to enable them to pay the sum exacted for restoring the town of Leith.

About this period, the City was greatly distressed by a debt of no less than 50,000l. payable to the Receiver-General of the revenue; and the *grant upon the ale* being found to be productive, it was continued, under the authority of General Monk, in order to discharge the public and private debts of the City.—A variety of other burdens also lay upon the inhabitants; such as, quartering of soldiers upon houses, assessment, local or dry quarters, and various other *items* of that kind, for the accommodation of the English army, then in possession of the country.—The Magistrates of Edinburgh had enjoyed their impost upon foreign wine with very little complaint on the part of the College of Justice; but now, the members of the Court objected to the imposition upon *ale* and *beer*, and other articles; which brought on a very serious dispute between the City and the College of Justice.—The nature and particulars will appear from the following papers, to be found on the record of the Town Council, 4th February 1659.

“ *Resolution* of the College of Justice, that they be free of Cefs,
 “ and Payment for Seats in the Kirks :—That, as to Quarterings,
 “ the

“ the Dean of Faculty may endeavour to get them totally taken off;
 “ and, if that cannot be done, then to be positive, that at least we
 “ may be free in the vacant time; and the greatest burden upon
 “ any family fall be one sodger, or twelf shilling Scots weeklie, in
 “ the option of the master, during the time of the Sessioun, and
 “ upon the rest proportionally; and this to be done at the discre-
 “ tion of so many persons, quhairof the half fall be of the
 “ College of Justice, to seek absolute immunity from those quho
 “ has power to grant the samen.—As to the quantity of the
 “ imposition, it is resolved, that it fall not exceed fix pennies Scots
 “ upon the pynt of strong beer and aill; and as to small beer,
 “ three pennies at most the pynt; *and what the Magistrates and*
 “ *Council resolve to put upon the wyne, French or Spanish, we*
 “ *are not to question the samen:* The endurance to be for three
 “ years, and longer if there fall be fund reason, be consent of the
 “ people and College of Justice:—That once or twice in the year,
 “ so many fall be appointed, quhairof ane certain number from
 “ the College of Justice, to consider the profits of the said im-
 “ position, that it may be abaited, if there fall be fund reason:—
 “ That the Town’s creditors may be satisfied of their annualrents
 “ and principal sounes proportionally, without preference or par-
 “ tiality, and annualrents, in the first place; which is to be seri-
 “ ously recommended to the Magistrates.

“ *Answers* from the Lord Provost, Baillies, and Council, un-
 “ to the paper delyvered to them from the Dean of Faculty, inti-
 “ tuled, *Resolutions from the College of Justice.*—Though they
 “ be unwilling to contest about the title and other expressions
 “ contained in the paper, yet being impowered with all the im-
 “ munity and privilege of a free city, having jurisdiction within
 “ themselves, established in the representative of a Lord Provost,
 “ Baillies, and Council, for many yeirs bypast; unquestionably
 “ they hold it their duty to say, that they do in charity construct

“ that the intent of the subscribers of the paper, is not to claim
 “ any share of the power of jurisdiction with the representatives
 “ of that ancient City over the inhabitants thereof, or for manag-
 “ ing of the affairs thereunto belonging; which being premised,
 “ they return this following answer to the desires presented unto
 “ them:—To the *first*,—That though the imposition upon wyne, aill,
 “ and beer, doth not directly concern the members of the Col-
 “ lege of Justice more nor others of the nation who resorted
 “ hither for trade and commerce, and upon other occasions, yet
 “ the aforesaid members do in this reap a peculiar benefit above
 “ all other leiges, that the Magistrates do offer to exempt them
 “ from payment of the assessment for the armie, and for a pay-
 “ ment of their seats in the kirks during the tyme of the im-
 “ position. To the *second*,—They are content that such as are mem-
 “ bers of the College of Justice, shall only be burdened with quarter-
 “ ings during their residence within the City, and that no quar-
 “ terings shall be imposed upon them when they and their families
 “ retire to the country, which is as much as they can do without
 “ great inconvenience. To the *third*,—They do earnestly desire,
 “ that it may be considered that the profit and advantage of trading
 “ by merchants, which in former tymes was the greatest support
 “ of the Citie, and is now exceedingly diminished, and them-
 “ selves, be many losses at sea, and otherways, greatly impoverished;
 “ and the profits and incomes of the members of the College of
 “ Justice, being compared with the condition of others, are little
 “ abated; and seeing the meanest of the inhabitants within the
 “ Citie, who earn their bread with much toyle and labour, are
 “ willing to submit themselves to a greater proportion than the
 “ Magistrates have resolved to impose; They trust, that the mem-
 “ bers of the College of Justice will not grudge to pay the quanti-
 “ ty resolved upon, especially, it being considered, that the profits
 “ of the said imposition is to be employed for paying the assess-
 “ ment,

" ment, and towards the relief of a part of the burden of this
 " Citie. To the 4th, 5th, and 6th,—They do willingly and freely
 " declare, that they are fully resolved, that the said imposition
 " shall be no longer continued than three yeirs, unless there shall be
 " just reason so to do, without consent of the neighbours. And
 " to the intent this may be the better known, they have obliged
 " themselves to make their accompts known to his Highnes
 " Council once in the yeir, and oftener if it be required; and like-
 " wise, they are willing the said accompts be received and per-
 " used be the Honourable Commissioners of Administration of
 " Justice, that it may be manifest to all men, they have no other
 " end before them in making this imposition, but for the more
 " equal and less sensible way of payment of the great burdens of
 " the assessments, and towards the relief of some part of the debts
 " of the Citie, by the overplus therefor (if any shall be); and as
 " to the satisfying of the creditors of the Good Town, they are
 " fully resolved to do the same, impartially and proportionably,
 " except when law shall constrain them to do otherwise.—And now
 " having returned such an answer as may give just satisfaction to
 " the haill members of the College of Justice, it is expected, that
 " upon consideration of the sad and daily decaying estate of
 " the antient Citie, the chief place of all the solemnities of this
 " nation, the whole number will acquiesce in the resolution of
 " the Magistrates and Council, and cheerfully contribute their best
 " endeavours, in their stations and callings, for advancement of so
 " good and necessary a work; but if it shall seem good to any of
 " that number to do otherways, we do freely offer to forbear
 " any imposition upon such of them, as shall either brew their
 " own drink in their houses, or otherways provide them-
 " selves from the country, they paying assessments for their
 " estates personal and real, according to the act of Parliament,
 " and

“ and being liable for their quarterings, and paying for their seats
“ in the kirk.

“ The same day, the Provost having reported, that the Gentle-
“ men of the shyre had met with his Lordship, and had proponed
“ overtures towards an agreement, and that it was once verballie
“ condescendit, that they sould submitt to the Commissioners for
“ Administration of Justice; but that they had since a little
“ withdrawn, and delayis till the College of Justice and Council
“ agree;—and desyred the opinion of the Council, whether or not
“ he sould continue to urge the said submission.—The Council
“ approved of the dilligence, and recommends to the Lord Pro-
“ vost to presse the said submission, and to do every thing requi-
“ site for the furtherance thereof, whereanent thir presents fall
“ be his warrant.”

Several meetings took place between the parties, the result of
which appears from the following act :

“ 23^d June 1659.

“ The Lord Provost having made report, That the Committee
“ of the Council had met yesterday with the Lord Brodie and the
“ Committee of the members of the College of Justice, anent the
“ business of the imposition; and that, after long debate, whether
“ six pennies Scotts should be condescendit on for payment of the
“ public assessment, and towards their payment of the public debt
“ of the Town, or whether twa pennies towards the payment of
“ the Town's debts alone, and the assessment to continue as for-
“ merly; and that at length it was proposd, wherein all pro-
“ bably might condescend unto, That twa pennies towards the
“ debt, as said is, be imposd, (the Magistrates and Council un-
“ dertaking to free the College of Justice of quarterings).—To which
“ it was answered be the Lord Provost, in name of the Commit-
“ tee, That he would report the same to the Council, and doubted
“ not to procure their assent thereunto; and that they all would
“ cordially

“ cordially and really endeavour to make the business practicable
 “ and effectual, though he had no small fears that the People would
 “ be much dissatisfied that the burden of assessment was not ta-
 “ ken off.—Which report the Council having considered, they do
 “ unanimously approve thereof: And, to the intent the same
 “ may be made practicable and put in execution, They appointed
 “ Walter Chesly, Baillie, William Johnston, Treasurer, John Law-
 “ der, John Mylne, and Thomas Kincaid (the Lord Provost being
 “ supernumerarie), to meet and consider what is fit to be done to
 “ the intent aforesaid; and to attend the meeting of the whole
 “ body of the College of Justice, who are to meet to-morrow in
 “ the forenoon for approving of the said agreement, and to con-
 “ sider what is fitting to be done in relation to the shyre, consult
 “ with the assessors, and every thing else previous to the putting
 “ the business itself in execution; and their presents to be their
 “ warrant.”

Upon this footing matters continued till the Restoration; and, in the 1671, Charles II. not only confirmed the grant of *four pound Scots per tun*, given by his grandfather and father, but also gave an additional imposition or custom of two shillings Scots upon the pint of French wine, and four shillings upon other foreign wines, strong waters, ale, beer, &c. imported and sold within the city of Edinburgh and its liberties.—This grant is special, without exception of persons; and the Lords of Session are ordered to direct letters of horning, at the instance of the Magistrates, for payment.—The reason and necessity of it is expressed in these words:

“ Adeo ut nisi prorogatio impositionis super vino aliisque cæ-
 “ teris commoditatibus importandis concedatur omni tempore fu-
 “ turo, magistratus non solum incapaces reddentur sustinere
 “ communes sumptus negotiorum dictæ civitatis, sed necessario
 “ cogentur subiacere oneri eorum antiqui æris alieni,” &c.

Maitland,
p. 185.

The debts here alluded to had accumulated from public and well known causes.—It may be said to have begun with the building of the Parliament House, which commenced in the 1632, and was completed in the 1640, at the expence of 209,340 merks Scots, whereof 56,000 only was contributed by subscription.—Of this extraordinary subscription, for which it is believed there is no precedent, the City was certainly entitled to be relieved by the Public.—The work ought to have been National, and was only submitted to in obedience to the Sovereign.—At his command, the Magistrates also repaired the Royal Palace, then in decay.—These expences were followed by the national troubles, whereof Edinburgh became the principal scene.

The imposts before mentioned, and particularly that upon ale, were found to be most productive in keeping down the public debts.—The last was opposed, not only by the College of Justice, but by the gentlemen of the county; and a contract was executed in the 1669, whereby all parties submitted, upon condition that the two pennies on the pint should not be renewed after the term therein mentioned.—But the calculations of the City and the Public on that head, were rendered abortive, by the unforeseen expences attending the expeding of these grants, and the prodigious sums exacted by the Duke of Lauderdale, upon every occasion where his interest was necessary.

It is needless to load this paper with the particulars.—The records of the City are pregnant with evidence upon that head; the principal articles of which have been made public by Maitland.

Page 101, et
passim.

It is said, that upon a late occasion, the City was reproached upon account of these payments, which were declared to be an avowed and corrupt expenditure of the public money.—Without holding themselves answerable for the conduct of their remote predecessors, the present Magistrates cannot discover either justice, propriety,

propriety, or consequence, in observations of that kind.—The City, in the unhappy times alluded to, stood in need of immediate relief—That relief could only be obtained by Royal favour.—The then Minister was the only medium of favour, and to him there was no access, but by money.—The magistrates of Edinburgh, therefore, as all others did at the time, were obliged to comply.—To demonstrate, however, their own innocence, they fairly entered the chief articles of these contracts upon record.—Shameful they doubtless were; but it is apprehended the disgrace only recoils upon a Government, whose every measure has left a stain upon the annals of the kingdom.

It ought farther to be remembered, that the Magistrates of Edinburgh were not the only public persons who were obliged to submit upon these occasions.—One of the heaviest, and the most glaring act of oppression ever committed against the City, was the seizure by the Earl of Lauderdale of the Citadel of Leith, upon a public pretence, of adding to the fortifications made by Cromwell, and making it a place of *national* strength.—The Minister, however, obtained a gift of it to himself, and erected it into a burgh of regality, with privileges terrifying to Leith and Edinburgh.—These, with him, were only words; but for these words, he extorted no less a sum than 6000 l. Sterling, which was the whole produce of the very grants he had already been paid for obtaining.—As a great part of the imposition of the two pennies was paid by the College of Justice, the Lords, by the terms of the gift, were authorized to see the money applied to the discharge of the debts of the Crown; and, for this purpose, the Collector's books lay patent at the office termed *the Chamber of Imposition*.—The money for Lauderdale was no where else to be found.—The proposition was made therefore to the Lords of Session, “who
“ having consulted with the whole College of Justice, consented
“ that 4000 l. of the said money should be raised forth of the
“ Chamber

Books of Sed.
Sept. 8. 1663.

“ Chamber of Imposition, in place of being applied to the discharge
“ of the debts of the Town, in terms of the gift.”

It was but right, then, that the College of Justice, upon the expiration of the former grant, should have consented to a renovation of it in the 1680.—“ The reason (says Fountainhall) why
“ the Town required the assent of the College of Justice, was in
“ respect they had the Town, by contract in the 1699, obliged
“ never to seek a renovation of the continuation of that gift.”

Vol. I. p. 322.

It is unnecessary to trace the two pennies on the pint any farther up.—Grants of the same nature were obtained by a number of the Royal Burghs, from Charles and James, which continue to be the principal support of the police of these places.

Notwithstanding, however, of these subsisting grants, the necessity of the case, and of the Town, these public funds, and every other article belonging to the City, was struck at, by the following part of the sentence pronounced by the College of Justice in their own favour: “ And likewise sustains the declarator as to
“ their immunity of watching and warding, and any impositions
“ for the same, and from the payment of any customs, causeway-
“ mails, shore-dues, and other impositions laid on their provisions
“ of meat and drink for their families, and other goods carried to
“ and from the town, and collected at the ports, or other places
“ within the liberties of the town.”

This part of the sentence, however, did not eventually affect the two pennies upon the pint of ale and beer, which was renewed by an act of Parliament, 13th June 1693; nor was obedience paid to it in a variety of particulars.—*Ex. gr.* The customs upon goods of all kinds continued to be exacted at the ports of the City, notwithstanding the judgment of the Court, and was only given up to the College of Justice in the 1693, upon their concurring in the new statute for the two pennies on the pint, as appears from the following act of Council:—

“ April

“ April 5th 1695.—The which day, the Right Honourable the
 “ Lord Provost, the Magistrates and Council of the City of Edin-
 “ burgh being assembled, the Council appoints, That all Advo-
 “ cates, Writers to the Signet, and all other members of the Col-
 “ lege of Justice, be expressly reserved from payment of any petty
 “ dues at any of the ports of this City ; and that hereafter, the
 “ conditions of the roup bear the same expressly.”

Each of the after statutes, for the tax of the two pennies, con-
 tains particular reasons for a continuation of the grant, and espe-
 cially the sensible decay or decrease of the revenue of the Town
 since the Union.—They also describe a great number of works,
 improvements and establishments, relating to the City and the
 Public, to which the surplus of the duties imposed by the statutes
 are directed to be applied.—Many of these have been executed,
 and several of them yet remain to be done, owing to the decrease
 of the fund,—to a change of manners,—and particularly, to the
 circumstance of that kind of ale and beer ceasing to be the habitual
 drink of the people.

Act 3tio: Geo.
 Regis.

It is also reported, that reflections were made against the
 City, upon account of the management of this fund, and the
 failure in the execution of some of the works pointed out by
 the Legislature.—It is sufficient to say, at present, that the Ma-
 gistrates are ready to give satisfaction on this head to all concern-
 ed, and that their defence belongs not to the present subject.

It is difficult to discover, upon what ground or principle the
 College of Justice could found their exemption from duties upon
 meat, drink, or the other necessaries of life, which did not affect their
 persons, but were of the nature of *general excises*, and which had
 been levied upon these articles indiscriminately, from the dates of
 the several grants down to the 1678, when their process about the
 Privileges commenced.—From the transactions with the Magi-
 strates, before stated, it is proved, that the duties upon foreign

wines, brought into Leith or Edinburgh, *had always been paid, without opposition from the College of Justice*; and it has also been shown, that the commencement of this tax reached beyond the institution of the Court.

The sentence 1687 made no difference upon the matter; because the grant in favour of the City had been executed in the gentlest manner.—No impost had been paid upon wines brought in for the use of private families: The tax was only exacted upon those commodities, when imported for sale in taverns or in shops.—All the other citizens of Edinburgh, as well as the members of the College of Justice, got warrants, upon application, for bringing in wine duty free, for their own private use; and this was the constant practice, from the date of the grant in the 1672, down to the month of August 1751, when a variation was introduced, in regard this duty also was found to be affected and diminished, by another change in the manners of the inhabitants of this City.—Formerly, the consumpt of wine in private houses bore no proportion to that of taverns and places of public resort; but now the case appeared to be reversed.—Drinking in private houses had become fashionable, and the duties to the Town were consequently lost.—In order to recover them, the Magistrates, of the date last mentioned, refused to grant any of those warrants, and ordered the impost to be collected upon all wines imported.—Several gentlemen, imagining that these measures had been taken without legal warrant, brought the matter before the Court by suspension; but, upon trial, the question was decided in favour of the City.

Dec. 26. 1752.
Tacksmen of the
Edinburgh im-
post on Wines,
against Sir Ro-
bert Myreton of
Gogar.

Every body knows that, in former times, Lawyers were attended by their clients in the taverns of the city, where the best part of their business was done.—Private houses were small and crowded, and causes happened then to be generally upon pleadings *viva voce*, assisted at times by short papers in writing.

—This

—This rendered the method of tavern-consultation practicable and agreeable to all concerned; though, according to the present system of business, and the length of the judicial papers, it would now be impossible.—According to former manners, then, it is plain that the College of Justice enjoyed no exemption from the impost upon wines.—As often as they went to the tavern they paid like other people; and it was only in the 1751 that their exemption began to operate by a construction of the sentence 1687; so that the point remains perfectly entire to be brought to a fair and special trial, if the City shall be so advised.—Had the late plan been adopted, this tax, disagreeable to the inhabitants, and hurtful to the improvements of the City, might have been happily abolished.

LIGHTING THE STREETS.

The first order to be found, regarding this article of Police, is in the 1555.—Frequent robberies and disorders happening in the streets, favoured by the darkness of the night, the Council ordered lanterns or bowetts to be hung out by the inhabitants of particular streets and closes, with light, which were to continue burning from five o'clock in the evening till nine, at which last hour it was considered to be the duty of every person to retire to his own house.

In the 1694 a new order was issued.—In place of the bowetts formerly ordered, the inhabitants of each land were appointed to hang out a candle in a lantern from five till ten.

This article of the police became a natural burden upon the inhabitants, as no man could be bound to light another's house.—The service, however, being unwillingly performed, many parts of the town were not lighted, and therefore a few lamps were at
first

first put up in the principal places, at the expence of the City.—These have by degrees increased in number; but the expence has also grown by much too heavy to be longer defrayed out of the common good, and the streets are not yet lighted so well as they ought to be.

The progress of the same improvement, both at London and Paris, is similar to that of Edinburgh.—In the 1415, a lantern and candle was ordered to be hung out by every citizen before his house, and London had no other light for above 150 years thereafter.—The next step in the progress was, that every person neglecting to put out his lantern, was ordered to pay six shillings *per annum* of composition for every house which exceeded the rent of 10 l.—The whole of the inhabitants came by degrees to pay this composition, which raised it at last to a considerable sum.—Offers were made by contractors to do the business at specific prices; and the lighting was at last farmed out for a premium of 600 l. Sterling annually paid to the City funds; so that, in place of a burden upon the corporation, the lamps of London were thus converted into a *Revenue*.

Upon this footing the matter continued till the 1736, under the inconveniencies and defects to be expected from such a regulation.—The lamps were few in number, ill lighted, ill cleaned, and burnt only an inconsiderable time; so that to this instance of bad police, the increase of burglaries, robberies, and nightly disorders were imputed.—An act of Parliament was applied for by the Mayor and Common Council, empowering them to erect a sufficient number of glass lamps, as should be judged most proper, all over the City and Liberties, to be kept burning from the setting to the rising of the sun throughout the year; and, in order to defray the charges of the improvement, an assessment is ordered to be levied upon the whole inhabitants, not exceeding 7 s. upon a house of 10 l. rent, 12 s. upon a house from 10 l. to 20 l. rent, 14 s. upon those

those from 30l. to 40l., and 20s. upon those of 40l. rent and upwards.—And for the more effectual support of the said lamps, it is thereby enacted, That *parish churches, cymeteries, chapels, meeting-houses, schools, halls, markets, warehouses,* and other public edifices, hospitals excepted, be severally taxed and assessed in due proportion.

17th Parl. of
George, c. 29.

It may then be concluded, from the account given, that neither the City, nor the Inhabitants of Edinburgh, are under any obligation to light the streets, without the assistance of the College of Justice.—They have already done so too long; the effect has been sensibly felt; and the neglect of the Magistrates in this article, they themselves apprehend, affords a reflection against their management, which it is high time to remove.

OF PRIVILEGES IN GENERAL.

IN the dark ages which preceded the revival of learning, no distinctions were known among men, but those which birth, or the chance of war, bestowed;—money was scarce, and land the only property of consideration:—Prerogatives, immunities, titles, franchises, liberties, and exemptions, may be said to have in a manner overrun the several kingdoms of Europe:—They were rewards which Princes and great men had always ready at hand to bestow.—Though some of the terms are used as synonimes, they differ materially.—*Privileges, privilegium, privileges*, as the words bear, are laws which regard individuals, whereby they were taken out of the general rule.—In the ancient Roman law, the *privilegium* imported a decree fatal to the person against whom it was directed; but those being abolished, the word came to be used in a reverse signification, and to denote

something favourable to the party.—Prerogatives are powers inherent to the person.—Civil offices, therefore, generally bestow *privileges*, while *prerogatives* are derived from birth.—Both are of an active signification; and that circumstance distinguishes them from immunities and exemptions, in so far as the former not only bestow freedom, but at the same time give a right to *act, and to do*.

By these things, vanity was gratified, and consequently they were prized above riches; defended, and preserved, with the utmost attention and ardour.—Every free man wished either to be personally distinguished, or at least to belong to some body of men who were so.—Not to mention the unbounded acquisitions made by the Church, from these sources are to be derived the rights and privileges of the great feudal vassals, the privileges of burghs, and, in later days, those of the Law, and of Learning.—In this great scale, the whole business appears to have consisted in a constant struggle of inferior ranks to become independent of their superiors, of every body of men to aggrandize their own order, and of every individual to procure himself a name.—In the Church, the Bishop disputed with the Archbishop,—the Abbays struggled to throw off the control of the Bishops,—and the Convents to become independent of both.—The great feudal Lords made the offices of the kingdom hereditary in their families,—had their estates exempted from the jurisdiction of the Prince, and endowed with royal powers.—Such were the Counties Palatine in England, and the Regalities with us.—From the same source, came the various titles of nobility, and all the orders and degrees of knighthood; and hence, too, Learning and the Laws came to get their degrees, their Bachelors, their Masters, their Serjeants, and their Doctors.—The civil business and disputes of modern Europe, for several centuries, will be found chiefly to consist in the attack and defence, the struggles and contests about these matters.—The advancement
of

of Learning and of Commerce, has by degrees effected a revolution in the opinions and estimation of men, with regard to matters of that kind:—The privileges of the Church have been diminishing for a long period, and are continuing to diminish, all over Europe.—The feudal Privileges and territorial Jurisdictions, are now almost annihilated in Britain.—The exclusive liberties of the cities and burghs have long been considered by the Legislature, and the Courts of Justice, as detrimental to the Public ; and therefore, in numerous cases, have been opened up, explained, or entirely laid aside.

It is not now by degrees, diplomas, or titles, that the rank of any man in the learned world is determined.—It is the glory of the present Reigning Family, that they yielded every point of Prerogative, which was judged necessary to complete the liberties of the people, and to increase the happiness of society.—Even the environs of the Royal Palace is no more a sanctuary to the fraudulent debtor.—The Judges of England have voluntarily given up several powers and distinctions, which their predecessors revered as inherent to their order ; and the example has been followed by both Houses of Parliament, who, for the good of the nation, have of late greatly confined those privileges, for which their predecessors would have fought.—The time was, when the peace of society, and the unity, even of the branches of the Legislature, were constantly disturbed by jealousies of this kind.—The King never allowed a bill to pass, without a *salvo* of the Prerogative ; nor the House of Lords, without a reservation of their privileges.—Nay, in the reign of Charles the II., Lord Clarendon affirms, that that most honourable House insisted in a *salvo* of *their privileges, in a bill against stealers of wood.*

“ When the House of Commons (says the Noble Historian)
 “ sent up a bill for the suppression or reformation of many irregularities and misdemeanours which had grown up in the late
 “ times

“times of disorder and confusion, as conventicles, or other riotous
 “assemblies; when there was a necessity of some clauses of power
 “to inferior officers, whereby they were qualified to discover those
 “transactions which would otherwise be concealed, the Lords
 “would be sure always to insert some proviso *to save their privi-*
 “*leges*, even in the acts which provided for the punishment of
 “such crimes as no person of quality could be supposed to be
 “guilty of, as of *stealing of wood*, and such vile trespasses, which
 “took up much time in debate, incensed the House of Commons,
 “and produced many and froward debates, in which the King
 “thought the Peers wrong.”—*Lord Clarendon's life*, p. 384.

The time was, even in Britain, when the Church gave sanctuary to the most atrocious murderers,—when, to do justice on him, would have been deemed a dreadful breach of Privilege.—It is not long since the privileges of twenty different places in the city of London, to protect from civil process, were swept away by act of Parliament.—Even cities and towns, whose essence lay in particular franchises, have now lowered their ideas upon their Exclusive Rights; and the lesser corporations in these towns have done so in proportion.—The Royal Burghs of Scotland do not now torture the inferior towns about the Privileges of Trade, nor do the corporations within the towns persecute all other unfree mechanics in the degree they formerly did.—Even the distinctions of Honour are almost forgot.—In former times, the infringement of a point of ceremony was considered as an affront to the whole body; and both communities and individuals remembered and avenged it.—~~Thus~~ The death of the deacon of the fleshers, killed in a broil upon the streets between the Hamiltons and Douglasses, in the minority of James the V., gained the whole inhabitants to the Earl of Angus, and was the cause of the defeat of his enemy the Earl of Arran's party, in the City, some little time after.

It is in the memory of many persons yet living, that the beat of a military drum, or the display of the colours of a regiment, within the walls of Edinburgh, would have been taken to be a violation of the honour and franchises of the City, and brought every mechanic from his shop to avenge it.—The removal of the Nether-Bow Port, was, in the present century, looked upon to be equivalent to an order for the demolition of the City ;—yet, a few years after, the old towers were made to yield to the convenience of the inhabitants.—Upon the same principle, the present Magistrates are endeavouring to unite and open up the increased Metropolis, the parts of which are most absurdly divided from each other by a remnant of ancient barbarous war, the *Old Town-Wall*.—That very wall, however, now confessedly a nuisance to the Public, was, not many years ago, looked upon to be one of the most sacred and valuable works belonging to the Royalty, and, as such, the reparation of it is among the list of things to which the produce of the two pennies upon the pint of ale, is, by the statute of George II., directed to be applied.

Even the privileges of the College of Justice have not escaped the effect of public opinion.—An advocacy from a Sheriff, or other judge competent, *merely upon privilege*, has been, for a considerable time, regarded as not very honourable to the member who pleads it.—Every body knows, that the Judges, where the cause justifies it, seldom fail to mark their disapprobation, by awarding exemplary costs of suit.—If the exertion, then, of an undoubted privilege inherent to the profession, an exertion which the predecessors of the Faculty would have judged incumbent on them to make, is to be held so much in disrepute,—Could it have been expected, that the Honourable and Learned Advocates of the present times, would have opposed, under the colour of Privilege, a self-conferred immunity from the service of religion and the support of the poor, against the noblest and most comprehensive

scheme of improvement that ever was proposed for the embellishment of any city in Europe.—When the extension of the Royalty, and the buildings upon it, now the pride of Edinburgh, and the admiration of strangers, were first projected, the execution of the scheme was protracted and opposed by a certain number of the City Clergymen.—Their opposition was defeated, and their conduct disapproved of, by an unanimous judgment of the Court of Session.—The attempt, however, on their part, *gave surprize to nobody*.

The French are generally thought to have created and introduced more privileges, exemptions, and distinctions, than any other nation of Europe.—So fond are they of these things, and so prevalent is the maxim, “ *Il faut etre quelque chose,* ”—that no man, who can do it, is easy, till he procure some office, or sinecure place, which gives him a privilege.—This vain prejudice is heavily felt and complained of;—nay it is imagined, that there is not a circumstance in the manners or polity of that people, which has so much retarded their progress as a commercial nation.

In France, all ranks and denominations in society, above the lower orders of the people, are distinguished by immunities, or subject only to particular jurisdictions.—All these privileges are carefully preserved, not upon account of their intrinsic value or patrimonial advantage, but of the personal consequence, and the evidence that thence arises of rank in life.—The *Noblesse* are free of the *taille*, and consequently, the payment of that tax stamps a man *roturier*.—It would be a digression much too long, to enter into the variety of these things, or (what to us appears) the whimsical estimation in which they are held.—A century is not yet past, since a gentleman would have thought himself degraded, by drawing or indorsing a bill of Exchange:—He considered his honour to be sullied, by the least contact of commerce or connection with any body that did any thing.—A precept upon his bailiff, or receiver, was the only act of that nature, which the haughty *Châtelain*

telan thought consonant to his dignity.—The reason was, that bills and commercial matters fell under the cognizance of the *Consul des Marchands* *, to whose jurisdiction he would upon no account submit.

In order to destroy these narrow ideas, some of the first philosophers, and best men of France, have thought that they could not do any thing more useful to their country, than to expose the nature of these hurtful privileges, and to confine them within proper limits.—The subject, therefore, has of late been treated with great learning, perspicuity, and elegance.—After distinguishing the several species of privileges, such as those inherent to persons, to particular functions arising from dignity, necessity, &c. &c.; these writers conclude with earnestly recommending, that no privileges should be acknowledged, but such as are bestowed by *special and express grants* from the Sovereign.—“ Even in
 “ such cases, (say they), it is the province, and ought to be the
 “ care of the judges, to limit the effects of the patents founded
 “ on, to their precise words, and not to suffer the least enlarge-
 “ ment of them by interpretation.—The judges should always
 “ keep in their mind the axiom of the law, That privileges are not
 “ to be extended by interpretation, from one person to another,
 “ from one thing to another, or from one case to another.—The
 “ maxim, *favores ampliandi*, is to be reversed.—Extensions to any
 “ one set of men, lay a load upon the rest of the Public; and to in-
 “ crease them, would be to counteract the Legislature.—It were
 “ sincerely (continues the same author) to be wished, that the
 “ wants of the State, the necessity of affairs, or the vanity of indi-
 “ viduals, had not multiplied these privileges; but since it is so, the
 “ Public ought, from time to time, to review the motives to which they
 “ owe their origin, to consider attentively the value and difference
 “ of

* The same as Dean of Guild, the Consul in Scotland.

“ of these motives, and to endeavour the annihilation of all pri-
 “ vileges *which are not truly useful to the King and to the People.*—
 “ Our ordinary tribunals, under whose immediate jurisdiction the
 “ matter of immunities fall, can do nothing more grateful to the
 “ Public, than to confine privileges of every kind within their
 “ precise and original limits, and to take advantage of every cir-
 “ cumstance to set aside all others, or at least to reduce them to
 “ some point of real utility.”

Voce Exemption.

This subject is treated with great spirit by the authors of the *Grand Encyclopedie.*—The original ought not to be injured by translation.—After showing that privileges, in some cases, may be founded on justice and propriety, or bestowed as the reward of bravery, virtue, or public services, they observe, That “des exemptions fondées sur ces principes, n’auront jamais rien d’odieux, parce qu’en s’ecartant à certains egards de la regle generale, elles rentrent toujours par d’autres voies dans le bien commun.”

“ Ces sortes des graces et des distinctions, n’exciteroient et ne
 “ justifieroient les murmures du peuple et les plaintes des citoyens, et
 “ hommes d’etat, qu’autant qu’il arriveroit que par un profit, par
 “ un interet pecuniaire, independant d’une exemption tres avan-
 “ tageuse, *le benefice de la grace excéderoit de beaucoup les sacrifices*
 “ *que l’on auroit fait pour s’en rendre digne ;* la veritable compen-
 “ sation suppose necessairement de la proportion ; il est donc evi-
 “ dent, que des qu’il n’y en aura plus entre l’exemption dont on
 “ jouit, et ce que bon aura fait pour la meriter ; on est *redevable*
 “ *du surplus a la société ;* elle est le centre où tous les rayons doivent
 “ se reunir ; il faut s’en separer ou contribuer dans sa proportion à
 “ ses charges. *Quelqu’un oseroit-il se dire exempt de co-operer au bien*
 “ *commun ?* On peut seulement y concourir differemment, mais
 “ toujours dans la plus exacte egalité.

“ S’il

“ S’il arrivoit que *la naissance, le credit, l’opulence*, ou d’autres
 “ *confiderations etrangeres au bien public* detruifissent, ou meme
 “ *alterassent des maximes si precieuses au gouvernement*, *il en resul-*
 “ *teroit, contre la raison, la justice, et l’humanité*, que certains citoy-
 “ *ens jouiroient des plus utiles exemptions par la raison*, meme qu’ils sont
 “ *plus en etat de partager les poids de contributions*, et que la portion
 “ *infortunée seroit punie de sa pauvreté*, meme par la surcharge dont
 “ *elle seroit accablée.*

“ Que les exemptions soient toujours relatives, jamais absolues,
 “ et l’harmonie generale n’en souffrira point la plus legere atteinte,
 “ tout se maintiendra dans cet ordre admirable, dans cette belle
 “ unité d’adminiftration, qui dans chaque partie apperçoit embrasse
 “ et soutient l’universalité.

“ Ces principes ont lieu, soit que les exemptions portent sur
 “ les personnes, soit qu’elles favorisent la chose.”

Our own countryman, Sir Thomas Craig, had, long before,
 with admirable precision treated the doctrine of Privileges:—
 “ *Generalibus verbis conceptum privilegium, ad æquitatem et*
 “ *naturalem rationem debet referri. Neque enim in his privile-*
 “ *giis, quæ contra jus commune conceduntur, ea licentia permit-*
 “ *tenda est, ut quovis extendi possint, aut quovis pro arbitrio pri-*
 “ *vilegiati progredi, sed strictissime sint interpretanda, adeo ut*
 “ *verba etiam in impropria significatione sint sumenda, ut ad jus*
 “ *commune redigantur. Certum est etiam ex jure, privilegia hæc*
 “ *contra juris regulas, et contra ipsam naturalem æquitatem con-*
 “ *cessa, in prejudicium tertii non extendi: privilegium enim ad*
 “ *alienam injuriam extendi non potest.*”

Page 176.

ANSWERS to General Objections made upon the Part of the COLLEGE of JUSTICE.

IT has been said, that the benefit of the town of Edinburgh is not to be reasoned from, or blended with the benefit of the Public:—That the City is under obligations to the College of Justice, to whom it principally owes its support and consideration; and therefore the exemption from the taxes of the Good Town is the proper and natural remuneration which the latter ought to bestow upon that Body by whom it is upheld.

If, by the *benefit of the Town*, was meant a mere increase of revenue to the Corporation, the distinction might be a just one: But when a plan of improvement is proposed to be carried into execution, of a magnitude becoming the Capital of this Ancient Kingdom,—a plan, whereby the elegancies of the Rich and the necessities of the Poor, are made to go hand in hand, by easy, simple, and obvious means,—is not every person interested in the success of it?—Edinburgh is at this moment, as it ought to be, the second town of this island; and, in that view, deserves general consideration.

Hitherto, a very different mode of thinking has taken place upon the subject.—The members of the College of Justice have always been considered to be equally interested with the Citizens in the prosperity and advancement of the place of their residence; and the favours of our Princes have been bestowed under that idea.—The famous Golden Charter, for instance, granted by James VI., just before his departure for England, proceeds upon a preamble, “ That Edinburgh is the fittest and most commodious city for
“ holding public conventions, to which our Nobility and Coun-
“ fellows resort, and wherein is held the principal courts of the na-
“ tion, namely, the High Court of Parliament, our College of Jus-
“ tice,

“ tice, which has jurisdiction in all civil causes, and the Court of
 “ Justiciary, which decides in matters criminal. We likewise call-
 “ ing to mind the many services done to Us and our Illustrious
 “ Ancestors, by the said Town and its inhabitants, both in peace and
 “ war,” &c. &c.—Every modern act of Parliament regarding the
 City, keeps the accommodation of the members of the College of
 Justice particularly in view.

For this reason it was, that, at an early period, the Lords of
 Session were authorised by the Legislature to superintend several ar-
 ticles of the police of the City, such as the regulation of the prices
 of provisions in the public markets.—And, in order that every
 thing may be done for the comfort and accommodation of the
 Judges, the Magistrates have immemorially paid their annual com-
 pliments to the Court in their robes of office, prayed their support
 in aid of the police, and desired to know their complaints in re-
 gard to any thing in the power of the Magistrates to redress.

In the debate upon the declarator 1679, the College of Justice
 attributed these customs to an ungracious origin.—They said that
 they were made express conditions of the return of the Court to
 Edinburgh, after the removal of it by order of James VI. in the
 1596; but there is nothing upon record to justify that conjecture.

At one period, indeed, it appears that the Court approached
 near to an inversion of the concurrence intended by law, into
 an encroachment upon the government of the Town.—The act
 1686 vested in the Court a particular power respecting the clean-
 ing of the streets.—It was followed by the decision upon the decla-
 rator in the 1687; and both together led the Judges into the error
 now to be noticed.—In January 1688, the Lords required a Table
 of the Price of Provisions, according to the markets, to be laid be-
 fore them.—“ And having considered the Table given them by the
 “ Magistrates, they find the rates are exorbitant, and that the Table
 “ is defective; and therefore discharge the publishing thereof, and
 “ declare

“ declare that they will, *by their own authority*, set down a Table
 “ for the prices of wines and other vivers ; and recommend to the
 “ Lords Dumcairn and Carse to prepare and bring in such a Table.
 “ —And the Lords declare they will proceed against, and punish,
 “ the transgressors of the rates to be set down, either in market, or
 “ out of market ; that they shall be called and fined, and the meat
 “ confiscated.

“ The Lords also required the Magistrates to nominate and ap-
 “ point visiters of the several markets, who are to attend at the
 “ time of market, and to see that there be no greater rates exacted
 “ than those in the Table, and that unsufficient flesh and fowls be
 “ not brought to the market ; who shall be called and fined if they
 “ be found negligent in their duty. And if the Magistrates shall
 “ not appoint visiters, the Lords declare that *they will name and*
 “ *appoint persons for visiting the markets.*

Against this there was a representation made for the Good
 Town, “ That though, by act of Parliament 1686, the Lords had
 “ the inspection of the cleansing of the streets referred to them,
 “ yet the sole power of the markets, &c. resided in the Magis-
 “ trates, who were both Sheriffs within themselves, and Justices of
 “ Peace, and, by their charters of erection and others, have
 “ *the sole government and policy of the burgh committed to them ; so*
 “ *that their constables and servants are only liable to be judged by*
 “ *them ; and they had rights arising from their transgressions :*
 “ And if the Town and its Magistrates malversed and were negli-
 “ gent, then they were *accountable to the King and his Privy Coun-*
 “ *cil, but not to the Session *.*”

Fountainhall,
 vol. I. p. 491.

The

* The temper of the Court seems, at this period, to have been by no means fitted for the impartial determination of a question between itself and the City of Edinburgh.—Who could have imagined that those *small ware stalls*, which continue at this moment to deform the Parliament-House, should have been the effect

The Court seems to have felt the weight and the justice of the City remonstrance.—From that time forward, no interferences with the police of the Town appear, but such as happened upon applications by the Magistrates themselves, for the assistance and countenance of the Judges, and which never seems to have been withheld.—On the contrary, the Lords have frequently ratified acts of the Town Council respecting such part of the City affairs as regarded the benefit of the Public, and also admitted those acts into the Books of Sederunt.

Upon the whole of this matter, it is plain, that the residence of the greatest part of the members of the College of Justice always has been in Edinburgh; and consequently they are equally interested in all its accommodations, improvements, and advantages, with the rest of the citizens.

The next circumstance, is, the benefit the City receives from the Supreme Court.—Had Edinburgh lost the College of Justice at the same time with the National Parliament, it is possible that the inhabitants, ere now, might have found other resources.—The residence of the Courts, therefore, perhaps led them to depend too much upon that circumstance.—Were such a mode of reasoning to be admitted, every country gentleman who keeps a town-house ought to lay claim to higher exemptions than the members of the College of Justice.—The gentlemen of the Revenue would also be entitled to the same benefits.—In short, if every member of society were to contemplate himself in these views, and to put a similar value upon the relations in which he stood, the claims of Privileges and Exemptions would be inextricable.—This reasoning

F f

leads

effect of a jealous and improper interference of the Court itself?—*Fountainhall*, however, bears record, “ That the Dean of Guild of Edinburgh discharged the cramers “ to sit within the Parliament House.—The Lords, upon a bill, continued their possession till farther orders, that some of their number might meet with the Magistrates “ thereanent.”—Westminster-hall has long ago been cleared of all such obstructions.

leads to another observation, which, it is said, has been seriously made by some people, viz. That the residence of the Court is not fixed, and that any other town in Scotland would be happy to double the benefits which the College of Justice enjoys in Edinburgh, were it to consent to be translated thither.

Practitioners likewise observe, that defenders, by the common style of the summonses, are cited to appear "before the Lords of Council and Session, at Edinburgh, or where it shall happen them to be for the time;" and they talk of some power of removal being therein implied or reserved.

It is true, that the Provincial Parliaments of France, at times, have put themselves to sale among the towns of their jurisdiction, but no such reproach can be made to the College of Justice.—From the institution of the Court, it has been stationary at Edinburgh.—In this very circumstance lay its superiority to the Old Session, which was moveable through the four quarters of the kingdom; and the words of the present summons are nothing more than *a remain of the style of the ancient brief*, which, like the English writs, were issued from Chancery, for calling parties into the King's Court *.—As the tribunal of the Sovereign, therefore, it was removeable at the pleasure of the King, like those in other monarchies.—History affords several instances of such removals, both in England and in Scotland.—Richard II., *anno* 1392, in resentment of the misdemeanours of the cities of London and Westminster, ordered all the courts of justice to be translated from thence to York.—In the 1596, the mob of Edinburgh, inflamed by the seditious Clergy, besieged James VI. and his Council in the Tolbooth.—The King, it seems, was provoked to such a degree, as to suffer himself to think even of razing the Town.—Upon
this

Vide cap. 62. Parl. 14. of James IV. 1457.—Originals of these brieves are preserved.

this occasion, the Court of Session were ordered, first to Leith, and afterwards to Perth.

After the fatal riot about the Service-Book in the High Church or Edinburgh, Charles I., to punish the Town, ordered the Court of Session, by proclamation, to remove to Dundee.—Another proclamation followed, 17th October 1637, which is here inserted, to show that the Court suffered a much greater punishment, upon this occasion, than the City.

“ *Apud Edinburgh, 17th Octob. 1637.*

“ Forasmuch as it hath pleased the King’s Majesty, upon divers great and good considerations, known to his Majesty, to remove his Council and Session from the City of Edinburgh, to the burgh of Dundee; and whereas it is inconvenient, at this time, *to remove it so far*, his Majesty is graciously pleased, that this next Session shall be holden at the burgh of Linlithgow, and the next, after the ordinary vacants, at the burgh of Dundee, and there to remain during his Majesty’s pleasure: And therefor, the said Lords, according to his Majesty’s special direction, ordains maistrs, or officers of arms, to pass and make publication hereof to all his Majesty’s good subjects, by open proclamation at all places needful, whereby they can pretend no ignorance thereof, but *may prepare themselves to attend at Linlithgow and Dundee accordingly.*”

King Charles’s
declaration.

This measure produced loud complaints from the whole nation; and petitions from all quarters crowded in, to have the Court restored.—When the King therefore sent down his declaration anent the tumults, to be published, the Marquis of Hamilton, High Commissioner, advised his Master to *sweeten it*, by a restoration of the Courts of Justice to Edinburgh, as the most acceptable thing that could

could be done to the Counsellors, the Judges, the Advocates, and all depending upon the law, and to the subjects in general, as well as to the City of Edinburgh.—The King returned his consent by express, which gave so much satisfaction, that the Privy Council sent up the following letter of thanks:—

“ Most Sacred Sovereigne,

*“ THE Marquesse of Hamiltoun, your Majestie’s Commission-
“ er, having imparted unto us your Majestie’s gracious pleasure
“ and allowance, that the judicatories of the Councell and of Ses-
“ sion, and others, shall be returned to the Citie of Edinburgh;
“ Thereupon, the Lord Commissioner being present, order was gi-
“ ven for publication at the Mercat Crosse of Edinburgh, with all
“ solemnities requisite, and that the like publication should be
“ made throughout the whole Kingdom, at all public places.—
“ This hath given so great contentment to all your Majestie’s subjects,
“ that we cannot expresse with what dutiful respect and heartie pray-
“ ers for your Majestie, they have embraced this great and undeserved
“ favour.”*

Next day, proclamation was made, to the great joy of people of all ranks; and the Commissioner, in his speech to Parliament, declared, “ That the chief thing which moved his Majesty thereto, “ was the sense of the many incommodities, which his subjects in “ general, and the judges in particular, did sustain, by the remov- “ al of the Session.”

Nelson’s Collec.
vol. I. p. 35.

Such were the consequences of the last attempt to remove the Supreme Court from Edinburgh.

It is plain, then, that the Town owes the residence of the Courts to the pleasure of the Sovereign, to the superior accommodations it is able to afford, and to the local advantages of a situa-
tion

tion in the centre of the Kingdom, and in the neighbourhood of the most fertile counties.

This is the place to take notice of an argument, which ought to have been unfashionable even in the 1687, *i. e.* the encouragements bestowed upon Lawyers in other kingdoms.—The circumstance appears to have been libelled upon, or stated, in the action at the instance of the College of Justice, as a point of right, by prescription.

In the dark ages, the race of men seemed to be born only to fight.—It became therefore necessary to bribe a few of the species to desert the fashion, to exercise the mind, and to cultivate something like learning, without being priests.—The time has been, when a man, who could read, was a being too precious to be hanged;—he had his *privilege or benefit of clergy*.—The scene is entirely changed.—It cannot be complained of, that the vineyard of the Law is not laboured; that the labourers are few; or that there is any necessity of encouraging the profession by bounties, or extraordinary privileges.

Nothing of the kind is known, claimed, or enjoyed in our neighbouring kingdom.—From the Lord Chancellor downwards, no Judge, Lawyer, or Attorney whatever, possesses any exemption or immunity, in regard to taxes;—for their private houses, they pay every shilling paid by other people.—The only privilege of Lawyers and Attornies, in London or Westminster, are those of not being obliged to serve as Parish-officers, or on Juries; and also, that of not being arrestable in certain cases.—All this is founded on the idea, of their being obliged to give attendance on the Courts; which circumstance, it has been shown, was the foundation of the original privileges of the College of Justice.—With regard to the Inns of Court,—all of them, who are not extraparochial, pay like the rest of the parish; and those who are

fo, support their own clergyman, and every other circumstance of Police*.

Lincoln's Inn, some years ago, made an unsuccessful struggle to get free of Rates; but, in the end, was charged with several articles which the collectors had formerly omitted.

Even the officers of Chelsea, Luke's Hospital, and other Public Buildings, have all been rated, and their pretensions to immunity totally disregarded.

C O N C L U S I O N.

FROM the foregoing account, made up after the most diligent enquiry into the subject, it is concluded, That the undoubted privileges of the Court of Session are,

1^{mo}, An exemption from the jurisdiction, not only of the Magistrates of Edinburgh, but of the whole inferior courts of the nation;—to which was originally added, an immunity from public taxes, personal to the Judges, of which they were, in after times, deprived by the Legislature.

2^{do}, The highest protection from Government, and respect from the Nation.—It was made statutory treason, by several acts of Mary and James, to strike or slay any person in the Inner-House, when the Lords are sitting; and in the Outer-House it is death.

3^{tio}, An immunity from watching, warding, or bearing any other office within Edinburgh, or any other burgh; and consequently, from the payment of Watch-money in Edinburgh, which has

* It can easily be shown, that Inns of Court, or *Hospitia Curie*, were anciently established in Scotland;—*ex. gr.* By the 9th act of the 2d Parliament of James the IV. anno 1489, the Sheriffs and Baillies, Collectors of the King's tax, are ordered to be "before the Chancellor and Lords of Council on Friday that next cummes, in George Robiesone's Innes, to make full compt of the said tax."

2d Parlt. of
Mary 1556,
c. 639. & 13th
of James VI.
c. 173.

has come in place of these ancient services.—As a consequence of this, they are also, in times of danger, free of any Train-Band or Militia orders, and subject to no command but that of their own Body ; though, according to Professor Spottiswood, “ in intestine
 “ commotions and public troubles of the kingdom, they voluntarily
 “ arm themselves ; the Advocates and Writers to the Signet are
 “ regimented ; they choose their own officers and commanders ;
 “ they have their ensigns and colours, and keep guard in the
 “ Parliament-House.”

Form of Pro-
 cess, p. 102.

4^{to}, An immunity from any assessment or taxation upon the *business* of the College of Justice, or the profession of the Law : Whereas, the citizen pays a tax, not only according to the *ratio* of his property, but also according to the amount of his trade and annual profits.—This is a material and distinctive privilege : The persons, or, which is the same, the trade and business of the citizens, are liable to taxation, while the Members of the Law are only to pay by the rate of their property and possession.—It is evidently unreasonable, that any part of the City itself, by which is meant *the buildings of it*, should be free ; for otherwise, the burdens which ought to be paid by the College, fall upon the other citizens, in proportion to the prosperity and acquisitions of its Members ; than which, nothing can be more unreasonable in itself, or tend so directly to the ruin of the Community.

5^{to}, Exemption from all taxes imposed by the sole authority of the Magistrates of Edinburgh.

6^{to}, That in all matters of taxation where the College of Justice are liable, they are entitled to be considered as a distinct body from the other inhabitants, and have a right to appoint a Committee for seeing justice done to themselves.

Lastly, and Principally, The Court is entitled to the exclusive privilege of judging in certain causes, and to the supreme jurisdiction in the civil business of this kingdom.

These

These are the *privileges* which were the subject of the several Parliamentary ratifications appearing upon record, and which the Members are bound by oath to defend.—The Court seems at all times to have discriminated between the essential rights of their Members, and *mere money payments*.—*Ex. gr.* When the original immunity of Cess was taken, even from the Judges, they did not think that the yielding to it had any relation to *the oath of office*.—On the contrary, the College of Justice, upon all occasions, came forward to the assistance of the Public.—In August 1688, they offered to furnish wages for 100 foot men of war, extending to 800 l. *per mensem*, and appointed two Lords and two Clerks to make the collection.

In the 1560, the Judges represented to the Estates of Parliament in a petition, That “though exempted from Public burdens and taxations, they not only do not make use of their true privileges of exemption, but also, in an extraordinary way, bear an extraordinary burden, more than any of the country, by out-reiking special troops.”

On the other hand, as often as the essential powers and privileges of the Court were thought to be attacked, the College of Justice stood forth in their own defence, with that firmness and determination which became the rank and character of its Members.—Of this there is a variety of instances upon record.

When Parliament, in 1650, intended to raise the funds mortgaged for the support of the Judges, in order to discharge certain debts due to the Scottish factors at Campvere, the Judges strenuously opposed the motion, *as an encroachment upon their rights and privileges*, which, by their oath, they were bound to defend.

Commissioners of Enquiry were appointed on the Forfeited Estates in the year 1715; and the report they made to Government, contained some insinuations against the conduct of the Court of Session, with respect to these estates, upon which a bill was brought

brought into "Parliament, for the relief of the creditors of the
 "forfeiting persons, and for the effectual bringing the rents and
 "profits of the forfeitures into Exchequer."

The Lords were of opinion, that this bill was injurious to them, and that it erected a new Court of Judicature, to the prejudice of the ancient and undoubted rights and jurisdiction of the Session.—They therefore presented a very spirited memorial to Parliament, against the several breaches of the privileges of the College of Justice, threatened by the measure.—They claimed the protection originally promised them by James V. at the institution of the Court, whereby the King engaged to give no credit to any that murmured against them; and they pled the oath taken at their admission, which obliged the individuals to maintain the rights and privileges of the Court.

No scruple of this kind was opposed to the payment of Poors Rates, Annuities, or other articles respecting the town of Edinburgh, which have been the subject of this paper.

It is not here proposed to enter into the questions of law, How far the non-payment of Ministers stipend, since the 1687, is of itself sufficient to establish an exemption;—How far arguments, founded upon time or prescription, can or ought to have effect in a question with a Corporate Body, whom the law considers in the same light as a minor;—Or how far, in a matter of annual payment, prescription of any kind can reach farther than to arrears?—Upon these, and all other relative points, the City will be regulated by proper advice.

A single decision of the Court, they hope, will be found not to make law, especially when it established a *bad custom*.—"Where
 "a former determination (says Sir William Blackstone) is most
 "evidently contrary to reason, the subsequent Judges do not pre-
 "tend to *make a law*, but to vindicate the old one from misrepres-

“sentation; for if it be found, that the former decision is manifestly absurd and unjust, it is declared, *not* that such a sentence was *bad law*, but that it was *not law*; that is, not the custom of the realm, as had been erroneously determined.—*Malus usus abolendus est*, is an established maxim.—To make a particular custom good, it is requisite that it has been used so long, that the memory of men runneth not to the contrary; so that, if any one can show the beginning of it, it is no good custom; for which reason, *no custom can prevail against an express act of Parliament, since the statute itself is a proof of a time when such a custom did not exist.*”

Introd. vol. 3.

To make way for the contest, the decree of 1687 must, no doubt, according to form, be laid open; and for this, it is apprehended, causes more than sufficient are ready to be shown.—The judgment pronounced was rather interlocutory than final.—A number of points at issue were left undecided, and continue so to this day.—The decree, so far as it went, is disconform to the libel, and even to the pleadings of the parties; for, contrary to all the rules of law, which concur to prohibit the enlargement of Privileges, the Lords were pleased to take the opportunity of this dispute, *to extend, or rather reach down the privileges declared*, to a number of people, never before that period known by the Public, nor acknowledged by the Legislature.—The force then of this famous sentence lies, not in its being a decree between two Bodies Corporate, but an *Act of Sederunt* of the Court, into which form it was immediately thrown, and published by the Judges.—What effect an act of Sederunt can have upon the *Chartered Rights* of the City of Edinburgh, is a point which has not yet received determination.

Upon the whole matter, it appears, that the College of Justice suffered themselves to be deprived of the only original and express exemption

exemption bestowed on them in money matters, viz. their immunity from the National taxes.

Secondly, That, in contradiction to the whole *Legislative Powers of the Kingdom, and to the possession of the City*, they bestowed upon themselves a part of those immunities which they have for some time enjoyed within the city of Edinburgh.

In the *third* place, It has been demonstrated, that Poors Money and Lighting the Streets, stand entirely clear of the sentence 1687, whether it be considered as a decree, or an act of sederunt, or both.

And, *lastly*, That the majority of the Advocates have treated the most patriotic proposal that ever was laid before the Faculty, in a manner altogether unknown to their predecessors, and unprecedented in the history, either of the Court or City.

Omni timore deposito, debemus libere reipublicæ consulere.

ADDEN-

Some time enjoyed within the city of Edinburgh.

whether it be considered as a decree, or an act of liberating or
and lighting the signal, stand entirely clear of the locomotive 1884.
In the same place, it has been demonstrated, that four thousand

presented in the history, either of the Court or City, in a manner altogether unknown to their predecessors; and the most patriotic proposal that ever was laid before the people. And, Mr. T. That the majority of the Associates have returned

Quia timore d'ap'lo, debemus libere cognoscere veritatem.

ADD

A D D E N D A.

IN collecting and arranging the variety of matter in the preceding sheets, omissions, and even errors, it is hoped, will meet with pardon, providing they appear not to have been intentional.

The capital fact now to be added, ought to have appeared in its proper place.—It relates to the

P O O R.

Besides the Parochial Poor, the city of Edinburgh has for ages supported another class of indigent people, whose relation to it was nearer, and who, as members of the Corporation, had a separate right to assistance, *i. e.* the Poor Burgeses.—This was done by pensions from the common good, according to circumstances of misfortune or sickness.—The erection of the Royal Infirmary, gave a considerable relief to individuals, in the situation last mentioned, for the reasons given in the following paragraph, taken from the history of that charity, published in the 1749.—“The Town of
“Edinburgh had long bestowed a considerable annual revenue
“in pensions to the Poor, and had had an established surgeon
“and apothecary to attend the sick in that list. But as this charity was, in a great measure, confined to those who, by Burgeships, had a title to be taken care of by the Town, it could not
“be extended to other distressed objects, who were not within that
“qualification; and even the pensioners themselves, living for
“the most part in the suburbs and obscure places of the town,
“at great distances from each other, could not be regularly and
I i “conveniently

“ conveniently looked after and supplied.—This necessarily suggested the necessity of a Public Infirmary, for the accommodation of the sick Poor.”

This distinction of Poor into parochial and burgal, not only coincides with the account given of the original state of society within towns, but completes the explanation of the two acts of Parliament of James VI., founded on as a title of exemption by the College of Justice.—The Poor referred to in these acts, were not the poor of the parish, to whom the general subsisting laws applied; but the poor burgesses, who had a claim on none but their brethren and the common good, till the date of the act, when resident proprietors or traders were declared to be also subject to taxation, for their support: and thus, our system of Poor Laws, introduced in that reign, appears complete and consistent.

S E N-

SENTENCE in favour of the COLLEGE OF JUSTICE,
against the TOWN OF EDINBURGH.

February 23. 1687.

THE Lords of Council and Session having considered the summons of declarator, raised at the instance of the Members of the College of Justice, of their privileges, against the town of Edinburgh; the suspension raised by them of the charges given at the instance of the Town for payment of the Annuity, and the bill of suspension, given in, of the charges for their proportion of his Majesty's supply; the answer made thereto for the Town, and whole dispute proponed for either party, with the acts of Parliament, and other acts and writs founded on *hinc inde* in the debate;—They sustain the foresaid declarator, as to the Members of the College of Justice their immunity and exemption from payment of the Annuity for the Ministers Stipends, and decerns and declares them free thereof, both as to bygones, and in time coming, and suspends the letters *simpliciter* for the same;—and likewise, sustains the declarator as to their immunity from watching and warding, and any impositions for the same; and from payment of any customs, causeway-mails, shore-dues, and other impositions laid on their provisions of meat and drink for their families, and their other goods carried to or from the Town, and collected at the ports or other places within the liberties of the Town;—and declares, that the producing a certificate, subscribed by a member of the College of Justice, bearing, that the goods or provisions do properly belong to him, shall be sufficient for freeing them from payment of the said customs and impositions, the certificate being renewed once in the half year at least;—and sustains the declarator as to the pursuers exemption

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from

from the civil jurisdiction of the Magistrates of Edinburgh;—and declares, that, upon their proponing declarator thereof, the Magistrates ought to desist from any procedure against them, without necessity of advocacy.—And, before answer as to the criminal jurisdiction, and to that point of the declarator concerning the pursuers employing unfreemen within the Town; The Lords declare they will take trial what has been the former custom as to both these points, and particularly what was done in the cases mentioned in debate.—And the Lords ordain, That, where a taxation or cess is imposed by acts of Parliament or Convention of Estates, to which the Members of the College of Justice are or shall be liable, that there be a special and distinct stent made upon the Town or suburbs for the quota imposed, and so much only as may defray the incident charges of collecting the same, wherein no exemption shall be given to the Magistrates, Stent-masters, or other persons, but that they be stented for their proportions of these impositions, as well as other inhabitants: And likewise, that the tenements belonging to trades be stented, and the Town's common-good, where the same consists in lands or feu-duties, and does not bear burden with the shyre; but prejudice to the town of Edinburgh, if they think fit, to lay on the proportions of those who have been in use to be exempted, upon their own neighbours, but not upon any Members of the College of Justice.—And, to the end these impositions, warranted by public authority, may be equally laid on, and those of the College of Justice, who are heritors, not burdened beyond their just proportions; The Lords declare, That they will from time to time nominate an Advocate, and an Writer to the Signet, for each quarter of the town, to meet with the Stent-masters who shall be appointed by the Magistrates, at their taking of the survey and valuation of the whole tenements within the burgh and suburbs, and of the trade of the burghesses which is in use to be stented, and to bear a part of the burden of the cess; and to be present at all their meetings for imposing of the stent, and to

see

see that the valuation be justly and equally made, and the stent laid on accordingly: And, for that effect, appoints the Magistrates to make intimation of the time of the Stentmasters meeting, to the Lord President of the Session, the Dean of Faculty, and Keeper of the Signet, ten days before, in time of session, and twenty days in time of vacance; and appoints this method of stenting to begin and take effect for that term of his Majesty's supply due and payable at Martinmas next 1687; but prejudice to the town of Edinburgh to use execution for that term's supply which was due at Martinmas last 1686, and the Whitsunday's term now ensuing, according to the stent already imposed for these two terms.—And the Lords do declare the persons following to be Members of the College of Justice, who are to enjoy the privileges above mentioned, viz. The Lords of Session, Advocates, Clerks of Session, the Clerks of the Bills, the Writers to the Signet, the Deputes of the Clerks of Session who serve in the Outer House, and their substitutes for registrations, being one in each Clerk's office, the three Deputes of the Clerks of the Bills, the Clerks of Exchequer, the Directors of the Chancellery their Depute, and two Clerks thereof, the Writer to the Privy Seal and his Depute, the Clerks of the General Register of Sasines and Hornings, the Macers of Session, the Keeper of the Minute-Book, the Keepers of the Rolls in the Inner and Outer House: And the Lords do extend the privileges foresaid to the persons following, viz. ane actual servant of each Lord of the Session, one servant of each Advocate, four Extractors in each of the three Clerks offices of Session, two servants employed by the Clerk of the Register in keeping the Public Registers, the Keeper of the Session House, and the Keeper of the Advocates Library.—It is always hereby declared, That if any of these servants, and others to whom the foresaid privileges are extended, shall keep merchant shops, taverns, or ale-houses, or exercise any other trade within the burgh, they shall not enjoy any of the privileges above-mentioned; and ordains thir presents to be recorded in the Books of Sederunt, and to be printed.

THE NATIONAL ARCHIVES
COLLEGE PARK, MARYLAND
20540



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